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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99–905–6 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule continues to relax the minimum size requirement for Florida red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended the change for Florida grapefruit. The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 12, 2000, and is expected to maximize grapefruit shipments to fresh market channels.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E–mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade requirement for red seedless grapefruit is U.S. No. 1. The minimum size requirement for domestic shipments is size 56 (at least 3$^{5}/_{16}$ inches in diameter) through November 12, 2000, and size 48 (3$^{9}/_{16}$ inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This rule continues in effect a change to the order's rules and regulations relaxing the minimum size requirement for domestic and import shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 grapefruit. This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 12, 2000. Absent this change, the minimum size would be size 48 (3$^{9}/_{16}$ inches diameter). The Committee met on August 31, 1999, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR 905.306) specifies minimum grade and

size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule continues in effect the adjustments in Table I to establish a minimum size of 56 through November 12, 2000. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). This rule also continues the adjustments in § 944.106 to establish a minimum size of 56 through November 12, 2000. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. The official crop estimate of 27 million 1⅗ bushel boxes is below last year's production of 28.7 million 1⅗ bushel boxes of red seedless grapefruit. Acreage has declined in recent years from 81,348 acres in 1996, to 76,025 acres in 1998, to 71,731 acres in 1999. The acreage declines are due to groves being abandoned due to economic reasons, unhealthy groves being removed and replanted, and sick and diseased trees being removed from healthy, productive groves and not being replanted.

The Committee anticipates that fresh shipments of red seedless grapefruit will be approximately 16 million ⅘ bushel cartons, similar to last season's level of 16.7 million ⅘ bushel cartons. The quality of this year's crop is anticipated to be below normal. The fruit is expected to be misshapen more than normal. All growing districts appear to be affected by poorly shaped fruit, which could reduce the packout percentages for the 1999–2000 crop. The individual fruit size for the current crop is projected to be a little smaller than normal, but not as small as last season. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1999–2000 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, because it will permit Florida grapefruit handlers to make available the sizes of fruit needed to meet consumer needs. Matching the sizes with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will maximize shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red seedless grapefruit is for export.

During the first 11 weeks of the season (September 20 through December 5), there was a volume regulation in effect to limit the volume of small red seedless grapefruit that entered the fresh market. The Department issued rules, which were published on September 17, 1999 (64 FR 50419) and November 1, 1999 (64 FR 58759), implementing that regulation. The Committee believes that the percentage size regulation has been helpful in reducing the negative effects of size 56 on the domestic market, and that no additional restrictions are needed for the upcoming season.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on the available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 12, 2000. This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1999–2000 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule continues to relax the minimum size requirement for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) until November 12, 2000, to reflect the relaxation in effect under the order for red seedless grapefruit grown in Florida.

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

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

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.201).

Based on the industry and Committee data for the 1998-99 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1998–99 season was around $7.60 per ⅘ bushel carton, and total fresh shipments for the 1998–99 season were approximately at 16.7 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Handlers in Florida shipped approximately 37,395,000 4/5 bushel cartons of grapefruit to the fresh market during the 1998–99 season. Of these cartons, about 22,123,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 16,720,000 cartons. During the period 1994 through 1998, imports have averaged 580,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule continues to relax the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3 9/16 inches diameter) to size 56 (3 5/16 inches diameter) through November 12, 2000. No change is being made in the minimum size 56 requirement for export shipments. Absent this rule, the minimum size requirement for domestic shipments would be size 48. The motion to allow shipments of size 56 red seedless grapefruit through November 12, 2000, was passed by the Committee unanimously. In addition, there was a volume regulation in effect for the first 11 weeks of the 1999–2000 season (September 22 through December 5) that limited the volume of small red seedless grapefruit that entered the fresh market (64 FR 50419, September 17, 1999; and 64 FR 58759, November 1, 1999).

This rule will have a positive impact on affected entities by maximizing shipments of red seedless grapefruit into fresh market channels. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements, or the grapefruit import regulation.

This rule continues to relax the minimum size from size 48 (3 9/16 inches in diameter) to size 56 (3 5/16 inches in diameter) through November 12, 2000. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. Matching the sizes that can be shipped with consumer needs is consistent with current and anticipated demand for the 1999–2000 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to handlers to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

During the period October 1, 1998, through June 30, 1999, imports of grapefruit totaled 15,500 metric tons (approximately 800,000 cartons). Recent yearly data indicate that imports during July, August, and September are typically negligible. Therefore, the 1998–99 season imports should not vary significantly from 15,500 metric tons. The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change must also be applicable to imported grapefruit. This rule relaxes the minimum size for imported grapefruit to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 12, 2000.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 31, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on November 1, 1999 (64 FR 58759). Copies of the rule were mailed by the Committee staff to all Committee members and grapefruit handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended January 3, 2000. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 58759, November 1, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule amending 7 CFR parts 905 and 944 which was published at 64 FR 58759 on November 1, 1999, is adopted as a final rule without change.

Dated: January 31, 2000.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2689 Filed 2–4–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV00–955–1 FR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Vidalia Onion Administrative Committee (Committee) for fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag of Vidalia onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on January 1 and ends on December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: February 8, 2000.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (863) 299–4770, Fax: (863) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia Onions grown in Georgia area, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Vidalia onions beginning January 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag of Vidalia onions handled.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 30, 1999, and unanimously recommended fiscal period 2000 expenditures of $421,600 and an assessment rate of $0.10 per 50-pound bag of Vidalia onions handled. In comparison, 1998–1999 budgeted expenditures were $373,577. However, during the 1998–99 fiscal period the Committee recommended and the Department approved a change in the fiscal period under the order to January 1–December 31 from September 16–September 15 to make the fiscal period consistent with the Vidalia onion marketing season (64 FR 48243, September 3, 1999; 64 FR 72265, December 27, 1999). To provide for continuous operation of the order, the 1998–99 fiscal period was extended by 3 and ½ months (from September 16 to December 31, 1999). As a result, actual expenditures for 1998–99 are expected to total about $475,577. In addition, the quantity of assessable onions for 1998–99 and assessment income is much less than expected. The Committee projected the quantity of assessable onions for 1998–99 at 4,842,857 50-pound bags and assessment revenue at $339,000. The actual quantity of assessable onions is expected to be 3,617,017 50-pound bags, and assessment revenue is expected to total $253,191. Because of this shortfall, the Committee will have to use more of its operating reserve to cover approved expenses than it expected.

The assessment rate of $0.10 is $0.03 higher than the rate currently in effect. The increase is needed so the Committee can maintain its operating

reserve at an acceptable level, and to cover increases in the Committee's promotion expenses for fiscal period 2000.

The major expenditures recommended by the Committee for fiscal period 2000 include $135,127 for administrative costs, $31,800 for compliance activities, $175,000 for promotional activities, and $47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) are $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Onion shipments for fiscal period 2000 are estimated at 4,200,000 50-pound bags or equivalent which should provide $420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for fiscal period 2000. Funds in the reserve (totaling $110,000 on December 31, 1999), would be kept within the maximum permitted by the order (about three fiscal period's budgeted expenses; § 955.44).

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

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's fiscal period 2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

This action also changes the 7 CFR Part number and title from "Part 911—Vidalia Onions Grown in Georgia" to "Part 955—Vidalia Onions Grown in Georgia", and the section heading number from "§ 911.209 Assessment rate." to "955.209 Assessment rate." that appeared at the end of the proposed rule to correctly state the title and section heading number.

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

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

There are approximately 133 producers of Vidalia onions in the production area and approximately 91 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia onions during the 1998–99 season was $15.45 per 50-pound bag or equivalent and total shipments were 3,617,017 bags. Approximately 28 percent of all handlers handled 83 percent of Vidalia onion shipments. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data but would contribute further to handler receipts.

Using the average price, about 97.4 percent of the Vidalia onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia onion producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for fiscal period 2000 and subsequent fiscal periods from $0.07 to $0.10 per 50-pound bag or equivalent of assessable Vidalia onions. The Committee unanimously recommended fiscal period 2000 expenditures of $421,600 and an assessment rate of $0.10 per 50-pound bag or equivalent. The assessment rate of $0.10 per 50-pound bag is $0.03 higher than the 1998–99 rate. The quantity of assessable Vidalia onions for fiscal period 2000 is estimated at 4,200,000 50-pound bags. Thus, the $0.10 rate should provide $420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for fiscal period 2000 include $135,127 for administrative costs, $31,800 for compliance activities, $175,000 for promotional activities, and $47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) were $151,127 for administrative costs, $37,850 for compliance activities, $161,600 for promotional activities, and $125,000 for research projects.

As mentioned earlier, in an effort to recover from its assessment income shortfall in 1998–99, maintain its operating reserve at an acceptable level, and expand its promotion activities, the Committee voted unanimously to increase its assessment rate to cover operating expenses during fiscal period 2000. The Committee believes that increased promotion activities are needed to help the Vidalia onion industry remain competitive in the marketplace.

The Committee reviewed and unanimously recommended fiscal period 2000 expenditures of $421,600. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Research Subcommittee, and the Advertising and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various promotion and research projects to the Vidalia onion industry. The assessment rate of $0.10 per 50-pound bag or equivalent of assessable Vidalia onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 4,200,000 50-pound bags for fiscal period 2000. This rate will generate $420,000, which is $1,600 below the anticipated expenses. The Committee found this acceptable because interest income and reserve funds are available to make up the deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for fiscal period 2000 could range between $10.00 and $15.00 per 50-pound bag of Vidalia

onions. Therefore, the estimated assessment revenue for fiscal period 2000 as a percentage of total grower revenue could range between 0.7 and 1.0 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Vidalia onion production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on December 13, 1999 (64 FR 69419). Copies of the proposed rule were also mailed or sent via facsimile to all Vidalia onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending January 12, 2000, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000 fiscal period began on January 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Vidalia onions handled during such period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR parts 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

§ 955.209 Assessment rate.

On and after January 1, 2000, an assessment rate of $0.10 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: January 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2688 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 936

[No. 2000–04]

RIN 3069–AA95

Information Collection Approval; Technical Amendment to Community Support Requirements Rule

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Act), the Office of Management and Budget (OMB) has approved a three-year extension of the information collection contained in the Federal Housing Finance Board's (Finance Board) community support requirements regulation and community support statement form. The OMB control number approving the information collection now expires on January 31, 2003. In accordance with the requirements of the Act, the Finance Board is amending the community support requirements rule to reflect this new expiration date.

EFFECTIVE DATE: The final rule will become effective on February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Program Assistance Division, Office of Policy, Research and Analysis, by telephone at 202/408–2874, by electronic mail at FITZGERALDE@FHFB.GOV, or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunications device for deaf persons (TDD) is available at 202/408–2579.

SUPPLEMENTARY INFORMATION:

I. Background

In order to extend the expiration date of the OMB control number approving the information collection contained in its community support requirements regulation and community support statement form, the Finance Board published requests for public comments regarding the information collection in the **Federal Register** on June 30 and November 15, 1999. *See* 64 FR 35157 (June 30, 1999) and 64 FR 61877 (Nov. 15, 1999). The Finance Board also submitted an analysis of the information collection, entitled "Community Support Requirements," to the OMB for review and approval. The OMB has approved a three-year extension of the information collection under OMB control number 3069–0003. The OMB control number now expires on January 31, 2003.

Under the Act and the OMB's implementing regulation, 44 U.S.C. 3507 and 5 CFR 1320.5, an agency may not sponsor or conduct, and a person is not required to respond to, an information collection unless the regulation or form collecting the information displays a currently valid OMB control number. Accordingly, the Finance Board is amending the community support requirements rule and community support statement form to reflect the new expiration date of the OMB control number.

II. Notice and Public Participation

Because the effectiveness of the information collection contained in the community support requirements rule and community support statement form must be maintained, the Finance Board for good cause finds that the notice and public procedure requirements of the Administrative Procedures Act are impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553(b)(3)(B).

III. Effective Date

For the reasons stated in part II above, the Finance Board for good cause finds that the final rule should become effective on February 7, 2000. *See* 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act do not apply since this technical amendment to the community support requirements rule does not require publication of a notice of proposed rulemaking. *See* 5 U.S.C. 601(2) and 603(a).

V. Paperwork Reduction Act

The rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 936

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Finance Board hereby amends 12 CFR part 936 as follows:

PART 936—COMMUNITY SUPPORT REQUIREMENTS

1. Revise the authority citation for part 936 to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), and 1430(g).

§§ 936.2, 936.3, 936.5 [Amended]

2. Revise the parenthetical statement that appears after §§ 936.2, 936.3, and 936.5 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0003 with an expiration date of January 31, 2003.)

§ 936.4 [Amended]

3. Add a parenthetical statement immediately after § 936.4 to read as follows:

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0003 with an expiration date of January 31, 2003.)

By the Board of Directors of the Federal Housing Finance Board.

Dated: January 27, 2000.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–2544 Filed 2–4–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–254–AD; Amendment 39–11554; AD 2000–02–36]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This amendment continues to require the relocation using new electrical contacts, and, for certain airplanes, adds a requirement to replace certain contacts installed in shelf 95VU during relocation of the relay with new contacts. 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 a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 27, 1998 (63 FR 50492, September 22, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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) by superseding AD 98–20–10, amendment 39–10777 (63 FR 50492, September 22, 1998), which is applicable to certain Airbus Model A319, A320, and A321 series airplanes, was published in the **Federal Register** on October 21, 1999 (64 FR 56715). The action proposed to continue to require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay using new electrical contacts. The action also proposed to add, for certain airplanes, a requirement to replace certain contacts installed in shelf 95VU during relocation of the relay with new contacts.

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 Proposal

One commenter supports the proposed rule.

Request to Revise Cost Estimate

One commenter concurs with the content of the proposed rule, but states that the estimate of work hours required to accomplish the replacement of the contacts is inaccurate in the proposed AD. The commenter states that for airplanes previously modified in accordance with Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997, or Revision 02, dated March 9, 1998, the replacement of contacts would take approximately 12 hours. For airplanes already in the process of being modified, the replacement would take approximately 3 hours.

The FAA infers that the commenter's estimate includes work hours for access and close to replace certain contacts with new contacts for previously

modified airplanes. However, the cost impact information, below, describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions, specified as 2 hours in the cost impact information, was provided to the FAA by the manufacturer. 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. 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 as proposed.

Cost Impact

There are approximately 120 airplanes of U.S. registry that will be affected by this AD.

The modification that is currently required by AD 98–20–10 takes approximately 61 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $209 or $961 per airplane, depending on the modification kit purchased. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be as low as $3,869 per airplane, or as high as $4,621 per airplane.

Should an operator be required to accomplish the replacement of certain contacts that is required in this AD action, it will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required replacement on U.S. operators is estimated to be $120 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.

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 39–10777 (63 FR 50492, September 22, 1998), and by adding a new airworthiness directive (AD), amendment 39–11554, to read as follows:

2000–02–36 Airbus Industrie: Amendment 39–11554. Docket 99–NM–254–AD. Supersedes AD 98–20–10, Amendment 39–10777.

Applicability: Model A319, A320, and A321 series airplanes; as listed in Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 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 (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 a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 18 months after October 27, 1998 (the effective date of AD 98–20–10, amendment 39–10777), relocate the engine/master 1 relay (11QG) from relay box 103VU to shelf 95VU in the avionics bay, in accordance with Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; Revision 02, dated March 9, 1998; or Revision 03, dated September 16, 1998. After the effective date of this AD, only Revision 03 shall be used.

(b) For airplanes on which Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; or Revision 02, dated March 9, 1998; has been accomplished prior to the effective date of this AD: Within 500 flight hours after the effective date of this AD, replace the contacts on lines 20 through 23 in shelf 95VU with new contacts, in accordance with paragraph B.(2)(m) of the Accomplishment Instructions of Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998.

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, 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

(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 Airbus Service Bulletin A320–24–1092,

dated March 26, 1997; Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997; Airbus Service Bulletin A320–24–1092, Revision 02, dated March 9, 1998; or Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 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 Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997; and Airbus Service Bulletin A320–24–1092, Revision 02, dated March 9, 1998, was approved previously by the Director of the Federal Registeras of October 27, 1998 (63 FR 50492, September 22, 1998).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 French airworthiness directive 1999–263–134(B), dated June 30, 1999.

(f) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2403 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–63–AD; Amendment 39–11550; AD 2000–02–32]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA. 315B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter France Model SA. 315B helicopters, that currently requires initial and repetitive visual inspections and modification, if necessary, of the horizontal stabilizer spar tube (spar tube). This amendment requires the same corrective actions as the existing AD and would require an additional dye-penetrant inspection of the half-shell attachment clamps (clamps). This amendment is prompted by an in-service report of fatigue cracks that initiated from corrosion pits. The actions specified by this AD are intended to prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–12–21, Amendment 39–10575 (63 FR 31610), applicable to Eurocopter France Model SA. 315B helicopters, was published in the **Federal Register** on November 8, 1999 (64 FR 60743). That action proposed to require initial and repetitive visual inspections and modification, if necessary, of the spar tube, as well as installing safety wire around each attachment clamp.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for two nonsubstantive changes that have been made to paragraph (f) and Note 3 of the AD. In paragraph (f), the NPRM incorrectly states that alternative methods of compliance (AMOC) or adjustments of the compliance time may be approved by the "Manager, Rotorcraft Standards Staff, Rotorcraft Directorate." This is incorrect and has been changed to state that the Manager, Regulations Group, Rotorcraft Directorate, is responsible for approving any AMOC or adjustment of the compliance time. Note 3 of the NPRM states that information concerning the existence of approved AMOC may be obtained from the "Rotorcraft Standards Staff;" this is also incorrect and has been changed to state that information may be obtained from the "Regulations Group." The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 28 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the inspections; 3 work hours per helicopter to accomplish the modification; and 0.5 work hour per helicopter to inspect and fit the safety wire. The average labor rate is $60 per work hour. Required parts will cost approximately $1,100 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,520.

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 39–10575 (63 FR 31610), and by adding a new airworthiness directive (AD), Amendment 39–11550, to read as follows:

AD 2000–02–32 Eurocopter France: Amendment 39–11550. Docket No. 98–SW–63–AD. Supersedes AD 98–12–21, Amendment 39–10575, Docket No. 98–SW–02–AD.

Applicability: Model SA. 315B helicopters with horizontal stabilizers, part number (P/N) 315A35–10–000–1, 315A35–10–000–2, or higher dash numbers, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect the aircraft records and the horizontal stabilizer installation to determine whether Modification 072214 (installation of the spar tube without play) or Modification 072215 (adding two half-shells on the spar) has been accomplished.

(2) If Modification 072214 has not been installed, comply with paragraphs 2.A., 2.B.1), 2.B.2)a), and 2.B.2)b) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 1998 (SB). If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts.

(3) If Modification 072215 has not been installed, first comply with paragraphs 2.A., 2.B.1), and 2.B.3), and then comply with paragraph 2.B.2)c) of the Accomplishment Instructions of the SB.

Note 2: Modification kit P/N 315A–07–0221571 contains the necessary materials to accomplish this modification.

(b) Before the first flight of each day:

(1) Visually inspect the installation of the half-shells, the horizontal stabilizer supports, and the horizontal stabilizer for corrosion or cracks. Repair any corroded parts in accordance with the applicable maintenance manual. Replace any cracked components with airworthy parts before further flight.

(2) Confirm that there is no play in the horizontal stabilizer supports by lightly shaking the horizontal stabilizer. If play is detected, comply with paragraphs 2.A. and 2.B.2)a) of the Accomplishment Instructions of the SB. If the fit and dimensions of the components specified in paragraph 2.B.2)a) exceed the tolerances in the applicable structural repair manual, replace with airworthy parts before further flight.

(c) At intervals not to exceed 400 hours time-in-service (TIS) or four calendar months, whichever occurs first, inspect and lubricate the spar tube attachment bolts.

(d) Within 90 calendar days and thereafter at intervals not to exceed 24 calendar months, visually inspect the inside of the horizontal spar tube in accordance with paragraph 2.A. and 2.B.1) of the Accomplishment Instructions of the SB.

(1) If corrosion is found inside the tube, other than in the half-shell area, replace the tube with an airworthy tube within the next 500 hours TIS or 18 calendar months, whichever occurs first.

(2) If corrosion is found inside the tube in the half-shell area, apply a protective treatment as described in paragraph 2.B.1)b) of the Accomplishment Instructions of the SB.

(e) Within 30 calendar days, perform a one-time dye-penetrant inspection for cracking on the 4 attachment clamps (See No. 11 on Figure 3 of the SB) of the half-shells as shown in Figure 3 of the SB. If a crack is found in any clamp, replace the cracked clamp with an airworthy clamp. If no crack is found, safety wire the clamp as shown in Detail C in the SB using two wraps of 0.6-mm or 0.8 mm (.023 or .032 inch) diameter lockwire (See No. 21 on Figure 3 of the SB) around the clamp so that the clamp is held together in the event of clamp failure. After installing the safety wire, inspect the clamps before the first flight of each day in accordance with paragraph (b)(1) of this AD.

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

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

(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 helicopter to a location where the requirements of this AD can be accomplished.

(h) The inspections and modifications shall be done in accordance with the Accomplishment Instructions of Eurocopter France Service Bulletin No. 55.01, Revision 4, dated May 4, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 13, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–277–037(A)R2, dated July 29, 1998.

Issued in Fort Worth, Texas, on January 26, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–2401 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–252–AD; Amendment 39–11551; AD 2000–02–33]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to certain Boeing Model 747–400 series airplanes that requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This amendment is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. 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 in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 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: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–15–05, amendment 39–8976 (59 FR 37655, July 25, 1994), which is applicable to all Boeing Model 747–400 series airplanes, was published in the **Federal Register** on June 22, 1999 (64 FR 33229). The action proposed to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system. and correction of any discrepancy found.

Explanation of Changes to the Proposed Rule

The original notice of proposed rulemaking (NPRM) proposed to supersede AD 94–15–05, which is applicable to Boeing Model 747–400 series airplanes equipped with either Pratt & Whitney PW4000 series engines; Rolls-Royce RB211–524G/H series engines; or General Electric (GE) CF6–80C2 series engines. Since the issuance of that NPRM, the FAA has determined that, in order to simplify compliance, each engine type should be addressed in separate rulemaking actions that do not supersede AD 94–15–05. Therefore, the FAA currently is developing separate rulemaking to address the Pratt & Whitney PW4000 series engines, and Rolls-Royce RB211–524G/H series engines referenced in the original NPRM, and has revised the applicability in this final rule to address the requirements for the GE CF6–80C2 series engines only. In addition, paragraphs (a) through (d) of the original NPRM are not restated in this final rule. The cost impact information, below, also has been revised accordingly.

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 for Credit for Previously Accomplished Work

One commenter requests credit for accomplishing the thrust reverser center drive unit (CDU) cone brake test during production. The commenter states that the tests were accomplished previously in accordance with methods equivalent to those described in Boeing Service Bulletins 747–78A2166 and 747–78A2113.

The FAA concurs with the commenter's request that accomplishment of the test during production is acceptable for compliance with the applicable test requirement in the final rule. "Note 2" has been added to the final rule to provide credit for accomplishment of the test during production.

One commenter requests credit for accomplishing the modification to install the third locking system of the thrust reversers during production. The commenter states that all Model 747–400 series airplanes, line numbers 1061 and subsequent, equipped with GE CF6–80C2 series engines, had a third locking system installed during production in accordance with Production Revision Record (PRR) 80452–102, and were not modified in accordance with Boeing Service Bulletin 747–78–2151 (which is a retrofit action applicable to line numbers 700 through 1060 inclusive).

The FAA concurs with the commenter's request. The FAA has determined that the production modification is technically equivalent to the modification described in Boeing Service Bulletin 747–78–2151; therefore, paragraphs (a)(1) and (a)(2) of this final rule [referenced as paragraphs (e)(1) and (e)(2) in the proposed rule], have been revised accordingly. In addition, "Note 3" has been added to the final rule for further clarification.

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.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 146 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 16 airplanes of U.S. registry will be affected by this AD.

The new actions required by this AD will not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service for thrust reversers that have not been modified.) That test requires approximately 12 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 functional test required by this AD on U.S. operators is estimated to be $11,520, or $720 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current 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:

2000–02–33 Boeing: Amendment 39–11551. Docket 98–NM–252–AD.

Applicability: Model 747–400 series airplanes equipped with General Electric CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) 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 in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Repetitive Functional Tests

(a) Within 1,000 hours time-in-service after the most recent test of the center drive unit (CDU) cone brake performed in accordance with paragraph (b)(1) of AD 94–15–05, amendment 39–8976; or within 650 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or the applicable section of paragraph III.A. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997.

Note 2: Accomplishment of the CDU cone brake test during production in accordance with Production Revision Record (PRR) 80452–102 prior to the effective date of this AD is considered acceptable for compliance with the test required by paragraph (a) of this AD.

(1) For Model 747–400 series airplanes equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 747–400 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Repeat the functional test of the CDU cone brake thereafter at intervals not to exceed 1,000 hours time-in-service.

Note 3: Model 747–400 series airplanes, line numbers 1061 and subsequent, equipped with GE CF6–80C2 engines, had a third locking system installed during production in accordance with Production Revision Record (PRR) 80452–102, and were not modified in accordance with Boeing Service Bulletin 747–78–2151 (which is a retrofit action for airplanes having line numbers 700 through 1060 inclusive).

Terminating Action

(b) Accomplishment of the functional test of the CDU cone brake, as specified in paragraph (a) of this AD, constitutes terminating action for the repetitive tests of the CDU cone brake required by paragraph (b)(1) of AD 94–15–05.

Corrective Action

(c) If any functional test required by paragraph (a) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any functional test required by paragraph (a) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, repair in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995, or Revision 3, dated September 11, 1997. Or,

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

Alternative Methods of Compliance

(d)(1) 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.

(2) Alternative methods of compliance for the functional test of the Thrust Reverser Actuation System (TRAS) lock for Model 747–400 series airplanes powered by General Electric CF6–80C2 series engines that have been modified in accordance with Boeing Service Bulletin 747–78–2151, or production equivalent, approved previously in accordance with AD 94–15–05, amendment 39–8976, are considered to be approved as alternative methods of compliance with this AD.

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995, and Boeing Service Bulletin 747–78A2113, Revision 3, dated September 11, 1997. This incorporation by reference is 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.

(g) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2413 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–34–AD; Amendment 39–11552; AD 2000–02–34]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that requires revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions. This amendment is prompted by an accident report indicating that possible accretion of ice on the wings of the airplane, due to the wing anti-ice system not being activated by the flightcrew, could have contributed to the source of the accident. The actions specified by this AD are intended to prevent undetected accretion of ice on the wings, which could result in reduced controllability of the airplane during normal icing conditions.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket No. 99–NM–34–AD, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rodrigo J. Huete, Test Pilot, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7518; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes was published in the **Federal Register** on July 14, 1999 (64 FR 37913). That action proposed to require revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions.

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

Request To Review Appendix C Icing Envelope

One commenter states its understanding that the use of 22,000 feet as a limitation to conduct certain procedures is related to the maximum altitude limit of the icing envelope specified in Appendix C of 14 CFR part 25. The commenter requests that the icing envelope of Appendix C be reviewed for its applicability to current flight operations, and, if necessary, expanded to ensure that all aircraft types are properly certificated to operate in icing conditions typically encountered during line operations. The commenter questions the overall suitability of Appendix C for certification of aircraft because it is based upon operational data collected over 50 years ago.

The FAA partially concurs. The FAA is considering redefining the icing cloud envelopes for the global atmospheric icing environment specified in Appendix C. When sufficient worldwide meteorological information and means are available to demonstrate that airplanes are able to safely operate in the redefined icing environment, the FAA may consider action in this regard. However, this AD is not the appropriate context in which to address that issue. Therefore, no change to this final rule is necessary.

Request To Require Operational Check Prior to Every Flight

The same commenter recommends that a provision be included in the proposed AD to conduct an operational check of the ice detection system prior to every flight versus prior to the first flight of the day. The commenter states that, if the procedures of the proposed AD are implemented, a greater reliance on the ice detection system will be necessary. The commenter suggests that this functional check prior to every flight would provide an additional level of safety below 22,000 feet and would provide the flightcrew a positive means to determine whether the system is operating properly and permit them to be more vigilant in the event of a known failure.

The FAA does not concur with the request to add a provision in the AD to conduct an operational check of the ice detection system prior to every flight versus prior to the first flight of the day. The check verifies latent failures that are not detected by the powerup check or on the continuous built-in test equipment (BITE) check. Based on the once-per-day check, the latest reliability and safety analysis establishes that failure of the ice detectors to annunciate icing is an extremely improbable event. Additionally, the AD does not depend on the ice detectors as primary means to activate the anti-ice systems below 22,000 feet mean sea level (MSL); instead it requires activation of the systems whenever icing conditions exist. Consequently, requiring a check of the ice detectors prior to every flight is considered to be redundant. No change to the final rule is necessary in this regard.

Request Concerning Dispatch Without Ice Detection System

The same commenter recommends that ice detection systems not be permitted to be deferred or placed on the Minimum Equipment List (MEL) due to increased reliance on ice detection systems.

The FAA does not concur. The current Canadair CL–65 Regional Jet Master Minimum Equipment List (MMEL, Revision 4, dated November 27, 1996) is considered appropriate and is consistent with the AD. The MMEL allows one of the two ice detectors to be inoperative provided the wing and engine cowl anti-ice systems are ON when the static air temperature (SAT) on the ground is 10 degrees Celsius or less and visible moisture in any form is present; and the wing and engine cowl anti-ice systems are ON when total air temperature (TAT) in flight is 10 degrees Celsius or less and visible moisture in any form is present. The MMEL also allows both ice detectors to be inoperative provided the aircraft is not operated in known or forecast icing conditions; and repairs are made within one flight day. 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

The FAA estimates that 133 Model Bombardier Model CL–600–2B19 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,980, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this 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:

2000–02–34 Bombardier, Inc. (Formerly Canadair): Amendment 39–11552. Docket 99–NM–34–AD.

Applicability: All Model CL–600–2B19 (Regional Jet Series 100) series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent undetected accretion of ice on the wings, which could result in reduced controllability of the airplane during normal icing conditions, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD: Revise the FAA-approved Canadair Regional Jet Airplane Flight Manual (AFM) by inserting a copy of the pages specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD into the AFM.

(1) Revise the Limitations Section to include pages 2 and 3 of Canadair Regional Jet Temporary Revision (TR) RJ/61–2, dated October 30, 1998.

(2) Revise the Emergency Procedures Section to include pages 4 through 6 inclusive of Canadair Regional Jet TR RJ/61–2, dated October 30, 1998.

(3) Revise the Normal Procedures Section to include pages 7 through 27 inclusive of Canadair Regional Jet TR RJ/61–2, dated October 30, 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York 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.

(d) The AFM revision shall be done in accordance with Canadair Airplane Flight Manual Temporary Revision RJ/61–2, dated October 30, 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. 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 March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2412 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–41–AD; Amendment 39–11555; AD 2000–02–37]

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 a one-time inspection to determine whether latch pins on the lower lobe and main deck side cargo doors are installed backward, and corrective actions, if necessary. This amendment also requires eventual modification of the latch pin fittings on certain cargo doors. This amendment is prompted by reports that latch pins have been found installed backward on the cargo doors of several airplanes. The actions specified by this AD are intended to prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 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: Julie Alger, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2779; 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 May 5, 1999 (64 FR 24092). That action proposed to require a one-time inspection to determine whether latch pins on the lower lobe and main deck side cargo doors are installed backward, and corrective actions, if necessary. For certain airplanes, that action also proposed to require eventual modification of the latch pin fittings on certain cargo doors.

Explanation of Change Made to the Final Rule

The FAA has revised the applicability statement of the final rule to reference "line numbers" instead of "line positions." The airplane manufacturer has informed the FAA that "line numbers" is the proper reference, although some Boeing service bulletins still refer to "line positions."

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 Proposal

One commenter supports the proposed rule, and two commenters state no objection to the proposed rule. An additional commenter supports the proposed modification.

Requests To Revise Applicability

One commenter requests that the applicability of the AD be revised to remove the airplane having line number 1079. The commenter points out that that airplane was modified in production and was removed from the effectivity of Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995, by Notice of Status Change 747–52A2258 NSC 03, dated December 14, 1995. The FAA concurs and has revised the applicability of the final rule accordingly.

In addition, one commenter requests that the one-time inspection of the latch pins of the main deck side cargo door be made applicable only to airplanes having line numbers 1 through 307 inclusive. The commenter states that the latch pins on airplanes having line numbers 308 and subsequent were modified in production with a bracket that prevents the latch pins from being installed backward. The FAA concurs with the commenter's request and has revised paragraph (a) of the final rule accordingly. [Also, as a result of the revision of paragraph (a) of this final rule, a new paragraph (b) has been added to incorporate the corrective actions specified in paragraphs (a)(1) and (a)(2) of the proposal, and all other paragraphs have been renumbered accordingly.]

Request for Credit for Previously Accomplished Actions

One commenter requests that a statement be added to the proposed rule to clarify that no further action is required for airplanes inspected in accordance with the proposed rule prior to the effective date of this AD. The FAA agrees that no further inspection is required for these airplanes. Operators are always given credit for previously accomplished actions by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously." Therefore, no change to the final rule is necessary in this regard.

Request for Extension of the Compliance Time

One commenter requests that the compliance time for the modification required by paragraph (b) of the proposed rule [paragraph (c) of the final rule] be extended from two years after the effective date of this AD to six years or at the next removal of the latch pins. The commenter states that the immediate safety concern is addressed once the one-time inspection specified in paragraph (a) of the proposed rule is accomplished, and that the modification does not need to be accomplished until the next time the latch pins are removed.

The FAA does not concur with the commenter's request to extend the compliance time for the modification. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, as well as the possibility that a latch pin may be misinstalled during maintenance until the modification is accomplished, the FAA has determined that two years represents an appropriate interval of time allowable wherein an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Revise Structural Inspection Requirements

One commenter requests that the proposed rule be revised to allow a Boeing Company Designated Engineering Representative to approve procedures for the structural inspection specified in paragraph (a)(2) of the proposed rule [paragraph (b)(2) of the final rule]. The commenter states that, in the event that a latch pin is installed backward, an airplane would be grounded until inspection methods are approved and accomplished, because no structural inspection methods are currently approved by the Manager of the FAA's Seattle Aircraft Certification Office [as specified in paragraph (a)(2) of the proposed rule].

The FAA does not concur with the commenter's request. To date, the airplane manufacturer has not provided the FAA with structural inspection criteria. The extent of the area that must be inspected for damage is not defined because the extent of the inspection depends on the number and location of latch pins found to be installed backward. Procedures for the structural inspections are also not defined, and there are no published standards that can be used as a basis for a compliance finding. The FAA is not authorized to delegate a function for which there is no established standards [i.e., in accordance with Part 25 ("Airworthiness Standards: Transport Category Airplanes") of the Federal Aviation Regulations (14 CFR part 25)]. No change to the final rule is necessary in this regard.

Request To Revise Service Information

One commenter requests that Boeing Alert Service Bulletin 747–52A2258 be revised to include the structural inspection methods specified in paragraph (a)(2) of the proposed rule [paragraph (b)(2) of the final rule]. The commenter states that this would reduce the number of requests for approvals of alternative methods of compliance that the FAA would have to review.

The FAA does not concur. As stated previously, the airplane manufacturer has not provided structural inspection procedures for inclusion in the final rule. The FAA has determined that further delay in issuance of this AD

while the airplane manufacturer revises Boeing Alert Service Bulletin 747–52A2258 would not provide an acceptable level of safety. However, the airplane manufacturer may request approval of an alternative method of compliance for structural inspection procedures on behalf of all affected operators, thereby limiting the number of requests for approval of alternative methods of compliance from individual operators. No change to the final rule is necessary in this regard.

Request To Add One-Time Inspection of Interchanged Latch Pins

One commenter, the airplane manufacturer, recommends that the proposed rule be revised to require accomplishment of Boeing Service Bulletin 747–52–2142, dated May 6, 1977. That service bulletin recommends a one-time inspection to detect interchanged latch pins between the lower lobe cargo doors and the main deck side cargo door, and installation of a pin stop bracket. The commenter provides no technical justification for its request.

The FAA does not concur with the commenter's request. To require this modification would necessitate issuance of a supplemental notice of proposed rulemaking and reopening of the comment period. The FAA finds that to further delay the issuance of this rule in this way would be inappropriate. Furthermore, though two interchanged latch pins were found during production, the FAA has not received any reports that operators have found such interchanged latch pins. Therefore, the FAA finds that mandatory action is not necessary. No change to the final rule is necessary in this regard.

Explanation of Change Made to Proposal

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposal specified a visual inspection, the FAA has revised this final rule to clarify that its intent is to require a general visual inspection. Additionally, a note has been added to the final rule to define that inspection.

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 990 airplanes of the affected design in the worldwide fleet. The FAA estimates that 235 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $28,200, or $120 per airplane.

It will take approximately 3 work hours per airplane to accomplish the required modification, at the average labor rate of $60 per work hour. Required parts will cost approximately $2,045 per airplane. Based on these figures, the cost impact of the AD on U.S operators is estimated to be $522,875, or $2,225 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.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2000–02–37 Boeing: Amendment 39–11555. Docket 99–NM–41–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1078 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight, accomplish the following:

One-Time Inspection

(a) Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995.

(1) For airplanes having line numbers 1 through 307 inclusive: Perform a one-time general visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors and the main deck side cargo door are installed backward.

(2) For airplanes having line numbers 308 through 1078 inclusive: Perform a one-time general visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors are installed backward.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect

obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions

(b) If any latch pin is found installed incorrectly during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD.

(1) Reinstall the affected latch pin correctly, in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995.

(2) Perform structural inspections to detect damage of the affected cargo door and doorway cutout, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Modification

(c) Within 2 years after the effective date of this AD, modify the latch pin fittings of the forward and aft lower lobe cargo doors, in accordance with Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996.

Note 3: Modification of the latch pin fittings accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–52–2260, dated December 14, 1995, is considered acceptable for compliance with paragraph (c) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (b)(2) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995; and Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996. 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.

(g) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2411 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–160–AD; Amendment 39–11553; AD 2000–02–35]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800 and 1000 Airplanes and Model DH.125, HS.125, BH.125, and BAe.125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800 and 1000 airplanes and Model DH.125, HS.125, BH.125, and BAe.125 series airplanes, that requires replacement of cadmium plated fittings and cone caps in the oxygen system plumbing with improved fittings and cone caps, a detailed visual inspection of the oxygen system plumbing in the area of the replaced parts, and corrective actions, if necessary. This amendment is prompted by reports indicating that a field survey of the affected parts revealed that a reaction process was occurring, which resulted in cadmium flaking. The actions specified by this AD are intended to prevent flaking of cadmium from certain oxygen system plumbing fittings and cone caps from blocking the valves and impairing the function of the oxygen system, which could deprive the crew and passengers of necessary oxygen during an emergency that requires oxygen.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085.

This information may be examined at:

- The Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or
- The Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or
- The Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

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 Raytheon Model Hawker 800 and 1000 airplanes and Model DH.125, HS.125, BH.125, and BAe.12 series airplanes was published in the **Federal Register** on November 16, 1999 (64 FR 62129). That action proposed to require replacement of cadmium plated fittings and cone caps in the oxygen system plumbing with improved fittings and cone caps, a detailed visual inspection of the oxygen system plumbing in the area of the replaced parts, and corrective actions, if necessary.

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

There are approximately 724 airplanes of the affected design in the

worldwide fleet. The FAA estimates that 481 airplanes of U.S. registry will be affected by this AD.

For Model DH.125, HS.125, BH.125 series 1A/1B, 3A/3B, 400A, 400B, 401B, 403A, 403B, 600A, 600B, 700A, 700B airplanes (236 airplanes of U.S. registry), it will take approximately 7 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately between $28 and $79 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $105,728, and $117,764, or between $448 and $499 per airplane.

For Model BAe.125 series 800A (C–29A) airplanes (6 airplanes of U.S. registry), it will take approximately 3 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $61 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be $1,446, or $241 per airplane.

For Model BAe.125 series 800A, and 800B airplanes, and Model Hawker 800 airplanes (202 airplanes of U.S. registry), it will take approximately 10 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately between $16 and $22 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $124,432 and $125,644, or between $616 and $622 per airplane.

For Model BAe.125 series 1000A and 1000B airplanes, and Model Hawker 1000 airplanes (37 airplanes of U.S. registry), it will take approximately 6 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately between $66 and $122 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of these airplanes is estimated to be between $15,762 and $17,834, or between $426 and $482 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. However, the FAA has been advised that manufacturer warranty remedies are available for some labor costs associated with accomplishing the actions required by this AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–02–35 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11553. Docket 99–NM–160–AD.

Applicability: Models and series of airplanes as listed in the applicable service bulletin(s) specified in Table 1 of this AD, certificated in any category.

TABLE 1

Model of Airplane	Raytheon Service Bulletin	Date of Service Bulletin
DH.125, HS.125, BH.125 series 1A, 1B, 3A, 3B, 400A, 400B, 401B, 403A, 403B, 600A, 600B, 700A, and 700B airplanes.	SB 35–3169	September 1998.
BAe.125 series 800A (C–29A) airplanes	SB 35–3171	September 1998.
BAe.125 series 800A and 800B airplanes, and Hawker 800 airplanes	SB 35–3034 and SB 35–3170.	September 1998.
BAe.125 series 1000A and 1000B airplanes, and Hawker 1000 airplanes	SB 35–3167 and SB 35–3168.	September 1998.

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 flaking of cadmium from certain oxygen system plumbing fittings and cone caps from blocking the valves and impairing the function of the oxygen system, which could deprive the crew and passengers of necessary oxygen during an emergency that requires oxygen, accomplish the following:

(a) For Model DH.125, HS.125, BH.125 series 1A, 1B, 3A, 3B, 400A, 400B, 401B, 403A, 403B, 600A, 600B, 700A and 700B airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated cone caps in the oxygen system plumbing with improved cone caps, and perform a detailed visual inspection of the removed cone caps, tee-piece and sleeve for evidence

of flaking or corrosion; in accordance with Raytheon Service Bulletin SB 35–3169, dated September 1998. If any flaking or corrosion is detected, prior to further flight, clean the tee-piece and sleeve, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

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."

(b) For Model BAe.125 series 800A (C–29A) airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated cone caps in the oxygen system plumbing with improved cone caps, and perform a detailed visual inspection of the removed cone caps, tee-piece and sleeve for evidence of flaking or corrosion; in accordance with Raytheon Service Bulletin SB 35–3171, dated September 1998. If any flaking or corrosion is detected, prior to further flight, clean the tee-piece and sleeve, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

(c) For Model BAe.125 series 800A and 800B airplanes and Model Hawker 800 airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated cone caps in the oxygen system plumbing with improved cone caps, and perform a detailed visual inspection of the removed cone caps, tee-piece and sleeve for evidence of flaking or corrosion; in accordance with Raytheon Service Bulletins SB 35–3034 or SB 35–3170, both dated September 1998, as applicable. If any flaking or corrosion is detected, prior to further flight, clean the tee-piece and sleeve, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

(d) For Model BAe.125 series 1000A and 1000B airplanes and Model Hawker 1000 series airplanes: Within 6 months after the effective date of this AD, replace the cadmium plated fittings in the oxygen system plumbing with improved fittings, and perform a detailed visual inspection of the removed fittings and the pipe connections for evidence of flaking or corrosion; in accordance with Raytheon Service Bulletin SB 35–3167 or SB 35–3168, both dated September 1998, as applicable. If any flaking or corrosion is detected, prior to further flight, clean the pipe connections, and perform an oxygen system flow check in accordance with the service bulletin. If any discrepancy is found during the flow check, prior to further flight, repair the oxygen system in accordance with the service bulletin, except as required by paragraph (e) of this AD.

(e) If any discrepancy is found during a flow check required by paragraph (a), (b), (c), or (d) of this AD and the applicable service bulletin specifies to contact the manufacturer for a repair disposition, prior to further flight, repair the oxygen system in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita 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 paragraph (e) of this AD, the actions shall be done in accordance with Raytheon Service Bulletin SB 35–3169, dated September 1998; Raytheon Service Bulletin SB 35–3171, dated September 1998; Raytheon Service Bulletin SB 35–3034, dated September 1998; Raytheon Service Bulletin SB 35–3170, dated September 1998; Raytheon Service Bulletin SB 35–3167, dated September 1998; or Raytheon Service Bulletin SB 35–3168, dated September 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 28, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2410 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–23–AD; Amendment 39–11556; AD 2000–02–38]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, A300–600, and A310 series airplanes, equipped with a welded auxiliary power unit (APU) fuel feedline adapter. That AD currently requires repetitive dye penetrant inspections to detect cracks, rupture, or fuel leaks of the fuel feedline adapter; and replacement of the adapter, if necessary. That AD also provides for optional terminating action for the repetitive inspections. This amendment requires accomplishment of the previously optional terminating action. 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 fuel leakage in the APU compartment, which could result in a fire in the APU compartment.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 2000.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 7, 1991 (56 FR 47672, September 20, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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) by superseding AD 91–20–07, amendment 39–8041 (56 FR 47672, September 20, 1991), which is applicable to certain Airbus Model A300, A300–600, and A310 series airplanes, was published in the **Federal Register** on October 6, 1999 (64 FR 54249). The action proposed to continue to require repetitive dye penetrant inspections to detect cracks, rupture, or fuel leaks of the fuel feedline adapter, and replacement of the adapter, if necessary. The action also proposed to continue to require verification of the correct torque values of the starter motor cable terminals and the generator cable terminals. The action also proposed to require accomplishment of the previously optional terminating action.

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 requests clarification concerning the relationship between the adapter part number identified in the referenced French airworthiness directive and Airbus service bulletin and the adapter part number referred to in the Airbus Illustrated Parts Catalog (IPC). The commenter has already modified its auxiliary power units (APU) to incorporate the adapter [part number (P/N) A4937021700200] specified in the service bulletin. The Airbus IPC suggests an alternative P/N for the adapter, i.e., P/N A4937021700400; yet the IPC makes no reference to any supersedure, nor does it refer to a service bulletin authorizing that P/N. The commenter asks whether the installation of an adapter having either P/N is acceptable for compliance with the French airworthiness directive and this proposed AD.

The FAA concurs that clarification is necessary. Airbus has advised the FAA that the only difference between the two referenced P/N's is that the tolerance for the B-nut thread of the adapter having P/N A4937021700400 has been modified following service experience. P/N A4937021700400 is installed on airplanes by Airbus Modification 10323 and is two-way interchangeable with P/N A4937021700200. Airbus advises that an adapter having either P/N will fully comply with the intent of the French airworthiness directive. The FAA has determined that installation of an adapter having either P/N will adequately address the unsafe condition identified in this AD. A NOTE has been added to the final rule to state that installation of an adapter having P/N A4937021700400 is also acceptable for compliance with the requirements of paragraph (b) of the AD.

Conclusion

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

Cost Impact

There are approximately 165 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 91–20–07 take approximately 2 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 currently required actions on U.S. operators is estimated to be $120 per airplane.

The new actions that are required by this new AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $274 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $394 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.

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 39–8041 (56 FR 47672, September 20, 1991), and by adding a new airworthiness directive (AD), amendment 39–11556, to read as follows:

2000–02–38 Airbus Industrie: Amendment 39–11556. Docket 99–NM–23–AD. Supersedes AD 91–20–07, Amendment 39–8041.

Applicability: Model A300, A300–600, and A310 series airplanes; certificated in any category; equipped with an auxiliary power unit (APU) fuel feedline adapter, P/N A4937021700000 (welded configuration).

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 (e) 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 an APU compartment fire, accomplish the following:

Restatement of Requirements of AD 91–20–07, Amendment 39–8041

Repetitive Inspections

(a) Within 100 hours time-in-service after October 7, 1991 (the effective date of AD 91–20–07, amendment 39–8041), and thereafter at intervals not to exceed 400 hours time-in-service: Perform a dye penetrant inspection to detect cracks, rupture or fuel leaks at the weld of the fuel feedline adapter, in accordance with Airbus Industrie All Operators Telex (AOT) 49–01, Issue 3, dated April 25, 1991. If cracks, rupture, or fuel leaks are found, replace the adapter with an improved, non-welded one-piece-body adapter prior to the next APU operation, or placard the APU inoperative until the adapter is replaced with the improved adapter, in accordance with Airbus Industrie Service Bulletin A300–49–0049, A300–49–6009, or A310–49–2012; all dated July 12, 1991; as applicable.

(b) Within 100 hours time-in-service after October 7, 1991, verify the correct torque values of the starter motor cable terminals and the generator cable terminals in accordance with Airbus Industrie All Operators Telex (AOT) 49–01, Issue 3, dated April 25, 1991. Correct any torque value discrepancies prior to further flight, in accordance with the AOT.

New Requirements of This AD

Installation

(c) Within 15 months after the effective date of this AD, install an improved APU fuel feedline adapter in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–49–0049, Revision 1 (for Model A300 series airplanes); A300–49–6009, Revision 1 (for Model A300–600 series airplanes); or A310–49–2012, Revision 1 (for Model A310 series airplanes); all dated November 28, 1991; as applicable. Such installation constitutes terminating action for the requirements of this AD.

Note 2: Although the service bulletins referenced in paragraph (b) of this AD specify installation of an APU fuel feedline adapter having part number P/N A4937021700200, installation of an adapter having P/N A4937021700400 is also acceptable for compliance with the requirements of that paragraph.

Spares

(d) As of the effective date of this AD, no person shall install an APU fuel feedline adapter, P/N A4937021700000 (welded configuration), on any airplane.

Alternative Methods of Compliance

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

Special Flight Permits

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

Incorporation by Reference

(g) The actions shall be done in accordance with the following Airbus All Operators Telex (AOT) and Airbus service bulletins:

Service information referenced and date	Page No.	Revision level shown on page	Date shown on page
AOT 49–01, Issue 3, April 25, 1991	1–3	3	April 25, 1991.
A300–49–0049, July 12, 1991	1–11	Original	July 12, 1991.
A300–49–0049, Revision 1, November 28, 1991	1–4, 7, 8, 11	1	November 28, 1991.
	5, 6, 9, 10	Original	July 12, 1991.
A300–49–6009, July 12, 1991	1–9	Original	July 12, 1991.
A300–49–6009, Revision 1, November 28, 1991	1–6, 9	1	November 28, 1991.
	7, 8	Original	July 12, 1991.
A310–49–2012, July 12, 1991	1–11	Original	July 12, 1991.
A310–49–2012, Revision 1, November 28, 1991	1–4, 7, 8, 11	1	November 28, 1991.
	5, 6, 9, 10	Original	July 12, 1991.

(1) The incorporation by reference of Airbus Service Bulletin A300–49–0049, Revision 1. dated November 28, 1991; Airbus Service Bulletin A300–49–6009, Revision 1, dated November 28, 1991; and Airbus Service Bulletin A310–49–2012, Revision 1, dated November 28, 1991; 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 Airbus All Operators Telex (AOT) 49–01, Issue 3, dated April 25, 1991; Airbus Service Bulletin A300–49–0049, dated July 12, 1991; Airbus Service Bulletin A300–49–6009, dated July 12, 1991; and Airbus Service Bulletin A310–49–2012; dated July 12, 1991; was approved previously by the Director of the Federal Register as of October 7, 1991 (56 FR 47672, September 20, 1991).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 4: The subject of this AD is addressed in French airworthiness directive 98–480–269(B), dated December 2, 1998.

(h) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2469 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–88–AD; Amendment 39–11558; AD 2000–03–01]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100 and –200 series airplanes, that requires repetitive inspections of the

upper and lower chords of the wing front spar for cracks, and corrective action, if necessary. For airplanes on which no cracking is detected, this AD also provides an optional terminating action in lieu of repetitive inspections. This amendment is prompted by reports of cracks in the upper chord of the wing front spar. The actions specified by this AD are intended to detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire.

DATES: Effective March 13, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 13, 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: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; 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 747–100 and –200 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45481). That action proposed to require repetitive inspections of the upper and lower chords of the wing front spar for cracks, and corrective action, 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.

Request to Allow Alternative Inspection Method

One commenter requests that the FAA revise paragraph (a) of the proposal to allow accomplishment of an open hole high frequency eddy current (HFEC) inspection in lieu of the ultrasonic inspection that is specified in paragraph (a) of the proposal. The commenter asserts that accomplishment of an HFEC inspection "equals or exceeds the capability of surface ultrasonic inspections" for detecting cracking of the upper and lower chords of the wing front spar. The commenter states that the HFEC inspection should be accomplished in accordance with Figure 6 of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999 (which was referenced in the proposal as the appropriate source of service information for accomplishment of the proposed actions).

The FAA concurs with the commenter's request to approve the alternative inspection method. However, the FAA finds that, rather than revising paragraph (a) of this AD, it is more appropriate to add a NOTE stating that accomplishment of an HFEC inspection in accordance with Figure 6 of the service bulletin is acceptable for compliance with the requirements of paragraph (a) of this AD. NOTE 2 has been added to this final rule accordingly.

Request to Reference Alternative Terminating Action

One commenter requests that the FAA revise paragraph (b) of the proposed rule to reference accomplishment of certain strut and wing modifications or certain other terminating actions as terminating action for the requirements of this AD. The commenter states that accomplishment of certain modifications meets the intent of the terminating action described in the proposed rule, provided that an HFEC inspection of affected fastener holes has been accomplished (in accordance with Boeing 747 Non-Destructive Test Manual D6–7170, Part 6, Subject 51–00–00, Figure 16) prior to oversizing of the holes, and the holes were found to be free of cracks, corrosion, or damage.

The FAA infers that the commenter is referring to the terminating action specified in paragraph (c) of this AD. The FAA concurs with the commenter's request. The FAA finds that the strut and wing modifications and terminating action referenced by the commenter are already required by certain other AD's, which are described below.

- AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), applies to certain Boeing Model 747 series airplanes, and requires, among other things, modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2159, dated November 3, 1994.
- AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), applies to certain Boeing Model 747 series airplanes, and requires modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2158, dated November 30, 1994.
- AD 99–10–09, amendment 39–11162 (64 FR 25194, May 11, 1999), applies to certain Model 747–100, –200, and 747SP series airplanes, and military type E–4B airplanes. That AD provides for replacement of the wing front spar web with a new shot-peened wing front spar web, in accordance with Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, as an optional terminating action for the repetitive inspection requirements of that AD.

The FAA has determined that accomplishment of the wing and strut modification specified in AD 95–10–16 or AD 95–13–07, or the optional terminating action specified in AD 99–10–09, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, provided that an HFEC inspection of subject fastener holes has been accomplished (in accordance with Boeing 747 Non-Destructive Test Manual D6–7170, Part 6, Subject 51–00–00, Figure 16) prior to oversizing of the holes, and the holes were found to be free of cracks, corrosion, or damage. The FAA has added NOTE 3 to this final rule accordingly.

Request to Delete Certain Supplemental Structural Inspection Document Inspections

One commenter requests that the FAA revise the proposal by adding a paragraph that eliminates the requirement for certain inspections to be accomplished in accordance with the Supplemental Structural Inspection Document (SSID). The commenter justifies its request by saying that oversizing the web-to-chord fastener holes, as described in the optional terminating action in Boeing Service Bulletin 747–57–2305, Revision 1, will "zero time" the fastener holes, renewing the fatigue life. The commenter states that, if this optional terminating action is accomplished, SSID inspections W–24B at the front spar web-to-chord fastener holes between the upper link fittings and W–24C at the front spar web-to-chord fastener holes at the outboard upper link fittings would no longer be necessary.

The FAA partially concurs with the commenter's request. The FAA acknowledges that, following accomplishment of the optional

terminating action, fatigue life will be renewed in the affected web-to-chord fastener holes. However, the SSID inspections that the commenter references are required, along with various other inspections, by AD 94–15–12, amendment 39–8983 (59 FR 37933, July 26, 1994), and AD 94–15–18, amendment 39–8989 (59 FR 41233, August 11, 1994). The FAA finds that deleting SSID inspections required by other AD's is not an appropriate action to take in this AD. Therefore, no change to the final rule is necessary in this regard.

Request to Allow Use of Original Issue of Service Bulletin

One commenter requests that the FAA revise paragraphs (a), (b), and (c) of the proposal to reference the original issue of Boeing Service Bulletin 747–57–2305, dated October 8, 1998, in addition to Revision 1 of the service bulletin, as appropriate sources of service information for the actions required by this AD. The commenter states that there is no substantial difference between the two versions of the service bulletin, and the inspection methods and procedures for terminating action are the same. The commenter states that Revision 1 adds missing fastener codes and revises grip lengths of fasteners. Further, the commenter states that operators that accomplished inspections or terminating action in accordance with the original issue of the service bulletin should not be required to perform the inspections or terminating action in accordance with Revision 1, nor should they be required to apply for an alternative means of compliance.

The FAA does not concur with the commenter's request. The FAA considers the grip length of fasteners (one of the items changed between the original issue and Revision 1) important for proper clamp-up, and the FAA has been advised that certain fasteners specified in the original issue of the service bulletin had grip lengths that were too long. In addition, the FAA considers the fact that certain fastener codes were missing from the original issue of the service bulletin to be significant, in that it could result in installation of fasteners that are not structurally satisfactory. Also, Revision 1 of the service bulletin deleted inspections of the fasteners in the upper and lower chords between the upper link fittings. For these reasons, the FAA does not find that accomplishment of the actions required by this AD in accordance with the original issue of the service bulletin is acceptable for compliance with this AD. No change to the final rule is necessary in this regard.

Request to Revise Statement of Unsafe Condition

One commenter, the airplane manufacturer, requests that the FAA revise the reason for issuing the proposed rule. The proposed rule states that "the actions specified by the proposed AD are intended to detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire." The commenter states that the correct reason for issuing the AD is that cracks addressed by Boeing Service Bulletin 747–57–2305 are subject to Item W–24A and W–24B in Boeing Document D6–35022, "Supplemental Structural Inspection Document." The commenter also states that the service bulletin was issued to address undetected cracks in the front spar chords that could result in extensive labor hours and downtime if the cracks propagate to the extent that replacement of a section of chord is necessary. The commenter concludes that there are no safety-of-flight issues associated with such cracking, and that fuel leakage due to undetected cracks is very unlikely because, for leakage to occur, cracks in the chord would have to grow through the thickness of the chord, beyond the upper or lower edges of the front spar web, and beyond the fillet seal.

The FAA does not concur with the commenter's request. The statement of unsafe condition, as stated in the proposal, specifies what could happen if the inspections of the front spar upper and lower chords that will be required by this AD are not accomplished. The fact that fuel leaks have not been detected to date does not preclude leaks from occurring in the future. For example, even though an operator may have accomplished the strut and wing modification required by another AD (as discussed previously), if an HFEC inspection to detect cracking of the fastener holes was not accomplished, a crack may still be present and could grow to the point that fuel leakage occurs. The FAA finds no justification for revising the statement of unsafe condition as the commenter suggested. 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 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 332 Model 747–100 and −200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 137 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $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 $16,440, or $120 per airplane, per inspection cycle.

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.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it will take approximately 37 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $5,000 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $7,220 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 adding the following new airworthiness directive:

2000–03–01 Boeing: Amendment 39–11558. Docket 99–NM–88–AD.

Applicability: Model 747–100 and –200 series airplanes, listed in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the upper and lower chords of the wing front spar, which could result in reduced structural capability and possible fuel leakage onto an engine and a resultant fire, accomplish the following:

Inspections and Corrective Action

(a) Prior to the accumulation of 12,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later, accomplish an ultrasonic inspection for cracking of the upper and lower chord of the wing front spar, in accordance with Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999.

Note 2: Accomplishment of an open hole high frequency eddy current inspection in accordance with Figure 6 of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, is acceptable for compliance with the inspection requirement of paragraph (a) of this AD.

(1) If no cracking is found, repeat this inspection thereafter at intervals not to exceed 6,000 flight cycles, until the requirements of paragraph (c) of this AD have been accomplished.

(2) If any cracking is found, prior to further flight, accomplish "Part 2—Terminating Action" of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of this action constitutes terminating action for the requirements of this AD.

(b) During accomplishment of the terminating action required by paragraph (a)(2) of this AD, if any crack is found in the upper chord that is outside the limits specified in Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999; or if any crack is found in the lower chord; prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this AD, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(c) Accomplishment of "Part 2—Terminating Action" of the Accomplishment Instructions of Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 1999, constitutes terminating action for the requirements of this AD.

Note 3: Accomplishment of the wing and strut modification specified in AD 95–10–16, amendment 39–9233, or AD 95–13–07, amendment 39–9287, or the optional terminating action specified in AD 99–10–09, amendment 39–11162, constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD, provided that an HFEC inspection of subject fastener holes has been accomplished in accordance with Boeing 747 Non-Destructive Test Manual D6–7170, Part 6, Subject 51–00–00, Figure 16, prior to oversizing of the holes in accordance with AD 95–10–16, AD 95–13–07, or AD 99–10–09, and the holes were found to be free of cracks, corrosion, or damage.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–57–2305, Revision 1, dated January 21, 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.

(g) This amendment becomes effective on March 13, 2000.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2468 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–16–AD; Amendment 39–11557; AD 2000–02–39]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes. This action requires either a one-time ultrasonic inspection, or repetitive visual inspections and eventual ultrasonic inspection, to detect cracking of the longitudinal skin splice above the mid-passenger door panels, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct cracking of the longitudinal skin splice above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel.

DATES: Effective February 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined 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.

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: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes. The DGAC advises that, during a routine maintenance check, a horizontal crack of 35.6 inches was detected in the surrounding panel above the right mid-passenger door. The exact cause of the cracking is unknown at this time. The area of the crack is covered by a sealant bead at the junction of two skin panels and is not visible from the outside. After the insulation blankets were removed from the inside, the crack was visually detected 1 inch below stringer 11, and started 9 inches from frame 29 and extended 6.7 inches aft frame 30. Such cracking, if not detected and corrected, could result in reduced structural integrity of the fuselage pressure vessel.

Explanation of Relevant Service Information

Airbus has issued All Operators Telex (AOT) A300–53A0352, dated January 4, 2000, which describes procedures for a one-time ultrasonic inspection and repetitive detailed visual inspections to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 left- and right-hand and between frames 28A and 30A, and corrective actions, if necessary. The corrective actions involve installing either a temporary or permanent repair. The temporary repair consists of stop drilling all cracks and installing an external doubler attached with rivets. The temporary repair is to be replaced with a permanent repair within 2,000 flight cycles. The permanent repair consists of cutting out all cracked areas, and installing an external doubler with a milled step. The DGAC classified this AOT as mandatory and issued French airworthiness directive T2000–001–300(B), Revision 1, dated January 7, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct cracking of the longitudinal skin splice above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel. This AD requires accomplishment of the actions specified in the AOT described previously, except as discussed below. This AD also requires that operators report results of all inspection findings to Airbus.

Differences Between Rule and AOT

Operators should note that, unlike the procedures described in the Airbus AOT, this AD would not permit further flight if cracks are detected. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any cracks must be repaired or modified prior to further flight.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–16–AD." The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

2000–02–39 Airbus Industrie: Amendment 39–11557. Docket 2000–NM–16–AD.

Applicability: Model A300 series airplanes, having serial numbers 1 through 156 inclusive; certificated in any category; except those airplanes on which Airbus Modification 2611 has been installed.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the longitudinal skin splice above the mid-passenger door panels, which could result in reduced structural integrity of the fuselage pressure vessel, accomplish the following:

Ultrasonic or Detailed Visual Inspection

(a) Within 14 days after the effective date of this AD, accomplish the requirements of either paragraph (a)(1) or (a)(2) of this AD, in accordance with Airbus All Operators Telex (AOT) A300–53A0352, dated January 4, 2000.

(1) Perform a one-time ultrasonic inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

(i) If no cracking is detected, no further action is required by this AD.

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

(2) Perform a detailed visual inspection to detect cracking of the longitudinal skin splice above the mid-passenger door panels below stringer 11 (left- and right-hand) and between frames 28A and 30A.

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 mirrors, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(i) If no cracking is detected, accomplish the requirements of paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Repeat the detailed visual inspection thereafter at intervals not to exceed 80 flight cycles; and

(B) Within 90 days after the effective date of this AD, accomplish the requirements of paragraph (a)(1) of this AD.

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

Corrective Actions

(b) For airplanes on which any cracking is detected during any inspection required by paragraph (a)(1) or (a)(2) of this AD, prior to further flight, install either a temporary or permanent repair, in accordance with Airbus AOT A300–53A0352, dated January 4, 2000.

(1) If a temporary repair is installed, prior to the accumulation of 2,000 flight cycles after the installation of the temporary repair, install the permanent repair.

(2) If a permanent repair is installed, no further action is required by this AD.

Reporting Requirement

(c) Within 10 days after accomplishing the initial inspection required by paragraph (a)(1) or (a)(2) of this AD, and after all repetitive inspections required by paragraph (a)(2)(i) of this AD, as applicable, submit a report of the inspection results (both positive and negative findings) to: Mr. Rolland Filaquier—AI/SE–A21, Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus All Operators Telex A300–53A0352, dated January 4, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. 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 4: The subject of this AD is addressed in French airworthiness directive T2000–001–300(B), Revision 1, dated January 7, 2000.

(g) This amendment becomes effective on February 22, 2000.

Issued in Renton, Washington, on January 31, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–2467 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–49–AD; Amendment 39–11560; AD 2000–03–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires revisions to the Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA) for General Electric Company (GE) CF34 series turbofan engines to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. This AD also requires that an air carrier's approved continuous airworthiness maintenance program incorporate these inspection procedures. This amendment is prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts that indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, which if allowed to continue in service, could result in uncontained failures. The actions specified by this AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (238) 238–7199.

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 General Electric Company CF34 series turbofan engines was published in the **Federal Register** on October 7, 1999 (64 FR 54584). That action proposed to require, within the next 30 days after the effective date of this AD, revisions to the CF34 Engine Maintenance Program specified in the manufacturer's Instructions for Continued Airworthiness (ICA), and, for air carriers, their approved continuous airworthiness maintenance program. General Electric Company, the manufacturer of CF34–3A1 and –3B1 series turbofan engines, has provided the FAA with a detailed proposal that identifies and prioritizes the critical rotating engine parts with the highest potential to hazard the airplane in the event of failure, along with instructions for enhanced, focused inspection methods. These enhanced inspections will be conducted at piece-part opportunity, as defined in this AD, rather than at specific inspection intervals.

Comments Received

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

Change Name of Manual Section

One commenter (the manufacturer) states that the proposal should reference the Airworthiness Limitations Section instead of the Time Limits Section. The FAA concurs in part. The reference to the Time Limits Section will be removed and changed to the CF34 Engine Maintenance Program in this final rule.

Part Numbers (P/Ns)

One commenter notes that in Table 804 of the proposal, the Stage 2 High Pressure Turbine (HPT) Rotor Disk, P/N 5079T53 is incorrect. The correct P/N is 5079T73. The FAA concurs. To make this AD consistent with other enhanced inspection ADs, and in response to comments received on the other ADs, the P/Ns have been removed from Table 804 and the word "all" has been substituted for P/Ns.

Concurs With Proposal

One commenter concurs with the rule as proposed.

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

The FAA estimates that 352 engines installed on aircraft of US registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The total cost of the new inspections per engine will be approximately $120 per year. Using average shop visit rates, 275 engines are expected to be affected per year. The annual cost impact of the AD on US operators is therefore estimated to be $33,000.

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 (EO) 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–03–03 General Electric Company: Amendment 39–11560. Docket 99–NE–49–AD.

Applicability: General Electric Company (GE) CF34–3A1 and –3B1 series turbofan

engines, installed on but not limited to Bombardier Canadair CL601R (RJ) aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

Inspections

(a) Within the next 30 days after the effective date of this AD, revise the CF34 Engine Maintenance Program, Chapter 5–21–00, of the GE CF34 Series Turbofan Engine Manual, SEI–756, and for air carrier operations revise the approved continuous airworthiness maintenance program, by adding the following:

"9. *CF34–3A1 and CF34–3B1 Engine Maintenance Program—Shop Level Mandatory Inspection Requirements.*

A. This procedure is used to identify specific piece-parts that require mandatory inspections that must be accomplished at each piece-part exposure using the applicable Chapters referenced in Table 804 for the inspection requirements.

B. Piece-part exposure is defined as follows:

(1) For engines that utilize the "On Condition" maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions in the GEAE engine authorized overhaul Engine Manual, and the part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

(2) For engines that utilize the "Hard Time" maintenance requirements: The part is considered completely disassembled when done in accordance with the disassembly instructions used in the "Minor Maintenance" or "Overhaul" instructions in the GEAE engine authorized Engine Manual, and the part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.

C. Refer to Table 804 below for the mandatory inspection requirements.

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part nomenclature	Manual chapter/section/subject	Mandatory inspection
Fan Disk (all)	72–21–00, Inspection	All areas (FPI) [1] Bores (ECI) [2]
Stage 1 high pressure turbine (HPT) Rotor Disk (all)	72–46–00, Inspection	All areas (FPI) [1] Bores (ECI) [2] Boltholes (ECI) [2] Air Holes (ECI) [2]
Stage 2 HPT Rotor Disk (all)	72–46–00, Inspection	All areas (FPI) [1] Bores (ECI) [2] Boltholes (ECI) [2] Air Holes (ECI) [2]
HPT Rotor Outer Torque Coupling (all)	72–46–00, Inspection	All areas (FPI) [1] Bore (ECI) [1]

[1] FPI = Fluorescent Penetrant Inspection Method.
[2] ECI = Eddy Current Inspection.

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the CF34 Engine Maintenance Program, Chapter 5–21–00, of the General Electric Company, CF34 Series Turbofan Engine Manual, SEI–756.

(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 Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector (PMI), who may add comments and then send it to the Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(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.

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369 (c) of the Federal Aviation Regulations [14 CFR 121.369 (c)] must maintain records of the mandatory inspections that result from revising the CF34 Engine Maintenance Program and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369 (c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380(a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the Engine Maintenance Program requirements specified in the GE CF34 Series Turbofan Engine Manual.

(f) This amendment becomes effective on March 13, 2000.

Issued in Burlington, Massachusetts, on February 1, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2687 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–51–AD; Amendment 39–11559; AD 2000–03–02]

RIN 2120–AA64

Airworthiness Directives; General Electric Company GE90 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain General Electric Company (GE) GE90 series turbofan engines, that requires reducing the cyclic life limits for certain fan mid shafts with undesirable microstructure, and removing from service those mid fan shafts prior to exceeding the new limits and replacing with serviceable parts. This amendment is prompted by reports of magnetic particle inspections conducted by the manufacturer identifying segregation in the raw material, resulting in lower fatigue life properties. The actions specified by this AD are intended to prevent fan mid shaft failure, which could result in a total loss of thrust and inflight engine shutdown.

DATES: Effective April 7, 2000.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7742, fax 781–238–7199.

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 General Electric Company (GE) GE90–90B, –85B, and –76B series turbofan engines was published in the **Federal Register** on November 26, 1999 (64 FR 66415). That action proposed to reduce the cyclic life limits for certain fan mid shafts with undesirable microstructure, and remove from service those fan mid shafts prior to exceeding the new limits and replace with serviceable parts. That action was prompted by reports of magnetic particle inspections conducted by the manufacturer identifying segregation in the raw material, resulting in lower fatigue life properties. That condition, if not corrected, could result in fan mid shaft failure, which could result in a total loss of thrust and inflight engine shutdown.

Comments Received

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

Change Unsafe Condition Language

One commenter states that the statement of unsafe condition in the proposed rule is not accurate. The commenter believes that the language used does not correctly reflect the failure consequences of the fan mid shaft. The commenter also is concerned that the engine is not in compliance with Federal Aviation Regulations (FAR) 33 (14 CFR 33) requirements regarding shaft failure. The FAA concurs in part. Though the language used in the statement of unsafe condition in the proposal is typical of life limited parts ADs, a more accurate description of the failure consequences of the fan mid shaft would be a total loss of thrust and inflight engine shutdown. The statement of unsafe condition in this final rule has been changed accordingly.

GE90 Engine Model Applicability

The same commenter believes the proposal should apply to all GE90 engine models and not just those listed in the applicability. The FAA does not concur. The proposal addresses those fan mid shaft part numbers (P/Ns) and engine models that have had their published life limits reduced. This proposal does not address the fan mid shafts P/Ns and engine models that have had their published life limits increased. These fan mid shafts P/Ns and engine model combinations are discussed in GE90 Alert Service Bulletin 72–A0389, Revision 1, dated August 25, 1999.

Delete Ferry Flight Authorization

The same commenter believes that the special flight permit authorization paragraph included in the proposal should be deleted. The commenter believes that ferry flight permits should not be authorized in the case of a life reduction AD. The FAA concurs and that paragraph has been removed from this final rule.

Concurrence

One commenter concurs with the rule as proposed.

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Economic Analysis

There are approximately 118 engines of the affected design in the worldwide fleet. The FAA estimates that 4 engines installed on aircraft of US registry will be affected by this AD and that the prorated life reduction will cost approximately $71,000 per engine. Based on these figures, the total cost impact of the AD on US operators is estimated to be $284,000.

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 (EO) 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2000–03–02 General Electric Company: Amendment 39–11559. Docket 98–ANE–51–AD.

Applicability: General Electric Company (GE) GE90–90B, –85B, and –76B series turbofan engines, with fan mid shafts, part numbers (P/Ns) 1767M71G01, 1767M71G02, and 1767M75G02, installed. These engines are installed on but not limited to Boeing 777 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 fan mid shaft failure, which could result in a total loss of thrust and inflight engine shutdown, accomplish the following:

Reduced Life Limits

(a) Remove from service fan mid shafts and replace with serviceable parts prior to the following new, lower cyclic life limits:

(1) For fan mid shafts, P/N 1767M71G01, installed on GE90–85B and –90B series engines, the new life limit is 4,200 cycles-since-new (CSN).

(2) For fan mid shafts, P/N 1767M71G02, installed on GE90–85B and –90B series engines, the new life limit is 4,200 CSN.

(3) For fan mid shafts, P/N 1767M75G02, installed on GE90–76B, –85B, and –90B series engines, the new life limit is 8,200 CSN.

(b) This AD establishes new life limits for fan mid shafts, P/N 1767M71G01, 1767M71G02, and 1767M75G02. Except as provided in paragraph (c) of this AD, no alternate life limits for these affected parts may be approved.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) This amendment becomes effective on April 7, 2000.

Issued in Burlington, Massachusetts, on February 1, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–2686 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–4]

Remove Class D and Class E Airspace; Kansas City, Richards-Gebaur Airport, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action removes the Class D and Class E airspace areas at Kansas City, Richards-Gebaur Airport, MO. The airport was closed January 9, 2000.

EFFECTIVE DATE: 0901 UTC April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On January 9, 2000, the Kansas City, Richard-Gebaur Airport, MO was closed. Based on the airport being closed the Class D and Class E airspace areas are no longer necessary.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) removes the Class D and Class E airspace areas at Kansas City, Richards-Gebaur Airport, MO, extending upward from the surface to 1200 feet Above Ground Level (AGL). The closing of the airport made this action necessary.

The FAA concludes that there is an immediate need to remove the Class D and Class E airspace in order to incorporate this change into the next Sectional Chart and avoid confusion on the part of the pilots. Therefore, it is found that notice and opportunity to prior public comment herein are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace area designated for an airport that contains at least one primary airport around which the airspace is designated

* * * * *

ACE MO D Kansas City, Richards-Gebaur Airport, MO [Removed]

* * * * *

Paragraph 6004 Class E airspace areas designated as an Extension to Class D airspace area

ACE MO E4 Kansas City, Richards-Gebaur Airport, MO [Removed]

* * * * *

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

ACE MO E5 Kansas City, Richards-Gebaur Airport, MO [Removed]

* * * * *

Issued in Kansas City, MO on January 24, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2670 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE1]

Amendment to Class E Airspace; Creston, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Creston Municipal Airport, Creston, IA. A review of the Class E airspace area for Creston Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: *Effective date:* 0901 UTC, June 15, 2000.

Comments for inclusion in the rules Docket must be received on or before March 17, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket number 00–ACE–1, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Creston, IA. A review of the Class E airspace for Creston Municipal Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outmost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Creston Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for a flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charges. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–1." The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and

unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE IA E5 Creston, IA [Revised]

Creston Municipal Airport, IA
(Lat. 41°01′17″N., long. 94°21′48″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Creston Municipal Airport and within 2.6 miles each side of the 169° bearing from the airport extending from the 6.5-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2562 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–2]

Amendment to Class E Airspace; Ord, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Ord, Evelyn Sharp Field, Ord, NE. A review of the Class E airspace area for Ord, Evelyn Sharp Field, NE indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. In addition, a minor revision to the Airport Reference Point (ARP) is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

Effective date: 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 20, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–2, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Ord, NE. A review of the Class E airspace for Ord, Evelyn Sharp Field, NE, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Ord, Evelyn Sharp Field, NE, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–2" The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE NE E5 Ord, NE [Revised]

Ord, Evelyn Sharp Field, NE
(Lat. 41°37′27″ N., long. 98°57′09″ W.)
Ord NDB
(Lat. 41°37′26″ N., long. 98°56′53″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Evelyn Sharp Field and within 2.6 miles each side of the 311° bearing from the Ord NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2561 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–56]

Amendment to Class E Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Central Nebraska Regional Airport, Grand Island, NE. The FAA has developed Area Navigation (RNAV) Runway (RWY) 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Grand Island, Central Nebraska Regional Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new RNAV RWY 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 21, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–56, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 13, RNAV RWY 31, RNAV RWY 17, and RNAV RWY 35 SIAPs to serve the Grand Island, Central Nebraska Regional Airport, NE. The amendment to Class E airspace at Grand Island, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby

facilitate separation of aircraft operating under Instrument Flight Rules. The amendment at Grand Island, Central Nebraska Regional Airport, NE, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–56." The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse on negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE NE E5 Grand Island, NE [Revised]

Grand Island, Central Nebraska Regional Airport, NE
(Lat. 40°58′03″N., long. 98°18′31″W.)
Grand Island VORTAC
(Lat. 40°59′03″N, long. 98°18′53″W.)
Grand Island, Central Nebraska Regional Airport ILS
(Lat. 40°58′55″N., long. 98°18′53″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Central Nebraska Regional Airport and within 4 miles each side of the Grand Island ILS Localizer course extending from the 6.9-mile radius to 8.7 miles south of the airport and within 4 miles northeast and 6 miles southwest of the 294° radial of the Grand Island VORTAC extending from the 6.9-mile radius to 16 miles northwest of the VORTAC and within 4 miles east and 6 miles west of the 360° radial of the Grand Island VORTAC extending from the 6.9-mile radius to 16 miles north of the VORTAC.

* * * * *

Issued in Kansas City, MO, on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2560 Filed 2–4–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–55]

Amendment to Class E Airspace; O'Neill, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at O'Neill Municipal-John L. Baker Field, O'Neill, NE. The FAA has developed Area Navigation (RNAV) Runway (RWY) 13 and RNAV RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve O'Neill Municipal-John L. Baker Field, O'Neill, NE. Additional controlled airspace extending upward from 700 feet Above Ground level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 13 and RNAV RWY 13 and RNAV RWY 31 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 13 and RNAV RWY 31 SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 16, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–55, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 ;.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA has developed RNAV RWY 13 and RNAV RWY 31 SIAPs to serve the O'Neill Municipal-John L. Baker Field, O'Neill, NE. The amendment to Class E airspace at O'Neill, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at O'Neill Municipal-John L. Baker Field, O'Neill, NE, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–55." The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, datedSeptember 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE NE E5 O'Neill, NE [Revised]

O'Neill Municipal-John L. Baker Field, NE
(Lat. 42°28'12" N., long. 98°41'17" W.)
O'Neill VORTAC
(Lat. 42°28'14" N., long. 98°41'13" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of John L. Baker Field and within 2.6 miles each side of the 148° radial of the O'Neill VORTAC extending from the 6.4-mile radius to 7.4 miles southeast of the VORTAC and within 4.4 miles each side of the 315° radial of the O'Neill VORTAC extending from the 6.4-mile radius to 10.5 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on January 19, 2000.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2559 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–94]

Amendment to Class E Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E airspace area at Burlington, VT (KBTV) to correct the longitude and latitude coordinates for the Burlington International Airport.

DATES: Effective 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2000.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 99–ANE–94, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ane-airspace@faa.dot.gov"

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: This action corrects the longitude and latitude coordinates for the Burlington International Airport. This action is necessary to accurately describe the controlled airspace necessary for aircraft arriving at the departing from the Burlington Airport under instrument flight rules. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ANE–94." The postcard will be date stamped and returned to the commenter.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ANE VT E5 Burlington, VT [Revised]

Burlington International Airport, VT
(Lat. 44°28′23″ N, long. 73°09′01″ W)

That airspace extending upward from 700 feet above the surface within a 23-mile radius of Burlington International Airport; excluding that airspace within the Plattsburgh, NY, Class E airspace area.

* * * * *

Issued in Burlington, MA, on January 20, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–2558 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANE–93]

Amendment to Class F Airspace; Burlington, VT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class Airspace area at Burlington, VT (KBTV) to correct the longitude and latitude coordinates for the Burlington International Airport.

DATES: Effective 0901 UTC, April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 8, 2000.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 99–ANE–93, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ane-airspace@faa.dot.gov"

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: This action corrects the longitude and latitude coordinates for the Burlington International Airport. This action is necessary to accurately describe the controlled airspace necessary for aircraft executing instrument approaches to the Burlington Airport at times when Burlington Class C airspace area is active. Class E airspace designations for airspace areas designated as extensions to Class C surface areas are published in paragraph 6003 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse of negative comment, and, therefore, issues its as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments as necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ANE–93." The postcard will be date stamped and returned to the commenter.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

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

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6003—Class E airspace areas designated as an extension to a Class C surface area

* * * * *

ANE VT E3 Burlington, VT [Revised]

Burlington International Airport, VT
(Lat. 44°28′23″ N, long. 73°09′01″ W)
Burlington, VORTAC
(Lat. 44°23′50″ N. long. 73° 10′57″ W)

That airspace extending upward from the surface within 2.4 miles on each side of the Burlington VORTAC 201° radial extending from a 5-mile radius of the Burlington International Airport to 7 miles southwest of the Burlington VORTAC, and that airspace extending upward from the surface within 1.8 miles on each side of the Burlington International Airport 302° bearing extending from the 5-mile radius to 5.4 miles northwest of the Burlington International Airport.

* * * * *

Issued in Burlington, MA, on January 20, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–2557 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ACE–5]

Amendment to Class E Airspace; Monticello, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Monticello Regional Airport, Monticello, IA. A review of the Class E airspace area for Monticello Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, June 15, 2000.

Comments for inclusion in the Rules Docket must be received on or before March 24, 2000.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–5, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9: a.m. and 3: p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Monticello, IA. A review of the Class E airspace for Monticello Regional Airport, IA, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Monticello Regional Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this

document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–5." The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

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

* * * * *

ACE IA E5 Monticello, IA [Revised]

Monticello Regional Airport, IA
(Lat. 42°13′34″N., long. 91°10′02″W.)
Monticello NDB
(Lat. 42°12′02″N., long. 91°08′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Monticello Regional Airport and within 2.6 miles each side of the 141° bearing from the Monticello NDB extending from the 6.4-mile radius to 9.2 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on January 26, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–2672 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8874]

RIN 1545–AW10

Travel and Tour Activities of Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations clarifying when the travel and tour activities of tax-exempt organizations are substantially related to the purposes for which exemption was granted. This action provides needed guidance for tax-exempt organizations concerning when travel tour activities may be subject to tax as an unrelated trade or business. This action affects tax-exempt organizations that engage in travel tour activities.

DATES: *Effective Date:*

These regulations are effective on February 7, 2000.

Applicability Date: These regulations are applicable for taxable years beginning after February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg, (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1998, the IRS published in the **Federal Register** (63 FR 20156) a notice of proposed rulemaking under section 513 to clarify when the travel and tour activities of tax-exempt organizations are substantially related to the purposes for which exemption was granted. The notice of proposed rulemaking added Treas. Reg. § 1.513–7, which provides that whether travel tour activities are substantially related to an organization's exempt purposes is determined by examining all the relevant facts and circumstances. The proposed regulations also contain examples applying the facts and circumstances test in four situations.

The notice of proposed rulemaking solicited comments from the public. Nineteen commentators submitted written comments. A public hearing was held on February 10, 1999, at which eight speakers presented testimony. After consideration of all the comments, the proposed regulations under section 513 are adopted as revised by this Treasury Decision. The comments and revisions are discussed below.

Explanation of Provisions and Summary of Comments

Many of the commentators welcomed the proposed regulations as workable guidance that will promote tax compliance. Commentators differed on the approach that the IRS should adopt in final regulations. Some commentators suggested that the final regulations should adopt specific, weighted standards to be used in evaluating relatedness to exempt purpose. Other commentators recommended against adopting specific standards, arguing that no single set of standards would be appropriate given the broad range of tax-exempt organizations. One commentator suggested that the final regulations adopt a set of specific standards that would apply to test relatedness of tours in the educational context and a more general consistency standard that would evaluate whether the marketing, location, and execution of a tour are consistent with the organization's core exempt activities.

Section 513(a) generally defines an unrelated trade or business as any trade or business the conduct of which is not substantially related to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a). *See also United States* v. *American Bar Endowment,* 477 U.S. 105, 109–110 (1986). Treas Reg. § 1.513–1(d)(2) provides that, for the conduct of a trade or business to be substantially related to the purposes for which exemption was granted, the production or distribution of the goods or the performance of services must contribute importantly to the accomplishment of those purposes. Whether activities generating gross income contribute importantly to accomplishing any purpose for which an organization was granted exemption depends in each case upon the particular facts and circumstances. *Id.* This rule applies to travel tours.

Organizations exempt from tax under section 501(a) have diverse exempt purposes (for example: charities; social welfare organizations; labor, agricultural and horticultural organizations; business leagues; fraternal beneficiary societies). Accordingly, no one set of factors could be sufficiently comprehensive as to define relatedness for the variety of exempt organizations to which these travel tour regulations apply. Even among exempt organizations that share a common exempt purpose, such as education, the methods of accomplishing that purpose vary considerably. For this reason, the final regulations do not enumerate any specific factors that determine relatedness of travel tour activities to exempt purposes. The final regulations adopt the general facts and circumstances approach of the proposed regulations. *See e.g, Hi-Plains Hospital* v. *United States,* 670 F.2d 528 (5th Cir. 1982) (need for case-by-case analysis identifying exempt purpose and analysis of how activity in each case contributes to exempt purpose); *Louisiana Credit Union League* v. *United States,* 693 F.2d 525, 534 (5th Cir. 1982) (resolution of the substantial relationship test requires "an examination of the relationship between the business activities that generate the income in question* * * and the accomplishment of the organization's exempt purposes"). However, as discussed below, the final regulations include new examples that provide additional guidance regarding the application of this facts and circumstances approach in both educational and noneducational contexts.

Another commentator suggested that the final regulations should clarify that the manner in which an organization develops and promotes a tour is relevant to determining whether the tour activity is substantially related to exempt purposes. The development, promotion and operation of a tour are all indicators of whether an organization's offering of a tour is related or unrelated to its exempt purpose. *See International Postgraduate Medical Found.* v. *Commissioner,* 1989–36 T.C. Memo., 56 T.C.M. (CCH) 1140 (1989) (brochures promoting the trips emphasized recreational sightseeing activity and omitted educational course descriptions). Language has been added to the final regulations stating that relevant facts and circumstances include (but are not limited to) how a travel tour is developed, promoted and operated. Examples in the final regulations also illustrate the relevance of these factors.

Many commentators requested more examples addressing specific areas. As noted above, examples have been added that further illustrate the application of the facts and circumstances rule. Some commentators raised concerns regarding the number of hours of related activities a travel tour must offer. Examples in the final regulation clarify that the number of hours spent on any related travel tour activity is only one factor in determining relatedness of the tour as a whole to exempt purposes and is not by itself determinative. Examples in the final regulation clarify that the nature of the related activities, and the practicalities of engaging in such activities (for example, the hours during which the activity normally would be conducted), must also be taken into account.

One commentator suggested adding an example addressing whether income from travel tour activity is a royalty under section 512(b)(2) where the exempt organization does not operate the tour, but provides member names to a for-profit tour operator. Section 512(b)(2) excludes royalties from the computation of unrelated business taxable income. The question of what constitutes a royalty is beyond the scope of these regulations. For guidance as to whether income received by a tax-exempt organization from travel tour activities is excludable from unrelated business taxable income as a royalty, *see generally* Treas. Reg. § 1.512(b)–1(b) and *Sierra Club* v. *Commissioner,* 86 F.3d 1526 (9th Cir. 1996).

Some commentators suggested that the final regulations should contain provisions that prevent tax-exempt organizations from competing unfairly with taxable travel businesses. However, the test under section 513 is substantial relatedness to exempt purposes, not the presence or absence of unfair competition. Section 513 was enacted to prevent unfair competition between exempt organizations and taxable businesses. H.R. Rep. No. 2319, 81st Cong., 2d Sess. (1950), *reprinted in* 1950–2 C.B. 380, 409; S. Rep. No. 2375, 81st Cong., 2d Sess. (1950), *reprinted in* 1950–2 C.B. 483, 504; *Portland Golf*

Club v. *Commissioner*, 497 U.S. 154, 161–162, fn. 12 (1990); Treas. Reg. § 1.513–1(b). Nevertheless, "Congress did not force exempt organizations to abandon all commercial ventures", but rather imposed a tax on ventures that are not substantially related to an organization's exempt purposes. *United States* v. *American College of Physicians*, 475 U.S. 834, 838 (1986). *See also Louisiana Credit Union League* v. *United States*, 693 F.2d 525, 541 (5th Cir. 1982). Following this approach, the section 513(a) regulations, published in 1967, state that "any activity of a section 511 organization which is carried on for the production of income and which otherwise possesses the characteristics required to constitute 'trade or business' within the meaning of section 162—and which, in addition, is not substantially related to the performance of exempt functions—presents sufficient likelihood of unfair competition to be within the policy of the tax [imposed by section 511(a)]." Treas. Reg. § 1.513–1(b). In expanding the categories of organizations subject to unrelated business income tax in 1969, Congress revisited the unfair competition issue. "[A] business competing with taxpaying organizations should not be granted an unfair competitive advantage by operating tax free *unless* the business contributes importantly to the exempt function." H.R. Rep. No. 413 (Part 1), 91st Cong., 1st Sess., 44, 50 (1969), *reprinted in* 1969 U.S.C.C.A.N. 1645, 1689, 1695 (emphasis added). If an organization's trade or business is substantially related to its exempt purposes, the tax under section 511 is not imposed, regardless of the existence of competition with taxable entities. Accordingly, the final regulations continue to focus on relatedness to exempt purposes, as required by section 513.

The preamble to the proposed regulations requested comments on whether the final regulations should include documentation and recordkeeping requirements specific to travel tours. Commentators split on the preferred approach. Some commentators requested general guidance as to the types of records that an organization should keep to establish a tour's purpose, but did not want the IRS to mandate specific recordkeeping requirements. Other commentators asked that the IRS specify what documentation is required. Section 6001 authorizes the Secretary to prescribe regulations that require taxpayers to keep records sufficient to establish whether a taxpayer is liable for any tax imposed under the Code. Currently, any person subject to tax under subtitle A of the Code, including the tax imposed under section 511, or required to file a return of information with respect to income, must keep permanent books or records sufficient to establish the amount of gross income, deductions, credits or other matters required to be shown by such person in any return of tax or information. *See* Treas. Reg. § 1.6001–1(a). In addition, every organization exempt from tax under section 501(a) must keep permanent books of account or records sufficient to show specifically items of gross income, receipts and disbursements, and to substantiate the information required by section 6033. *See* Treas. Reg. § 1.6001–1(c).

The IRS and Treasury Department believe that, with respect to travel tours, it is unnecessary to supplement the existing recordkeeping requirements under sections 6001 and 6033. Therefore, the final regulations do not impose additional recordkeeping requirements. However, in response to commentators' suggestions, examples in the final regulations illustrate that contemporaneous documentation showing how an organization develops, promotes and operates the travel tour is relevant to the facts and circumstances analysis.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.513–7 is added to read as follows:

§ 1.513–7 Travel and tour activities of tax exempt organizations.

(a) Travel tour activities that constitute a trade or business, as defined in § 1.513–1(b), and that are not substantially related to the purposes for which exemption has been granted to the organization constitute an unrelated trade or business with respect to that organization. Whether travel tour activities conducted by an organization are substantially related to the organization's exempt purpose is determined by looking at all relevant facts and circumstances, including, but not limited to, how a travel tour is developed, promoted and operated. Section 513(c) and § 1.513–1(b) also apply to travel tour activity. Application of the rules of section 513(c) and § 1.513–1(b) may result in different treatment for individual tours within an organization's travel tour program.

(b) *Examples.* The provisions of this section are illustrated by the following examples. In all of these examples, the travel tours are priced to produce a profit for the exempt organization. The examples are as follows:

Example 1. O, a university alumni association, is exempt from federal income tax under section 501(a) as an educational organization described in section 501(c)(3). As part of its activities, O operates a travel tour program. The program is open to all current members of O and their guests. O works with travel agencies to schedule approximately 10 tours annually to various destinations around the world. Members of O pay $x to the organizing travel agency to participate in a tour. The travel agency pays O a per person fee for each participant. Although the literature advertising the tours encourages O's members to continue their lifelong learning by joining the tours, and a faculty member of O's related university frequently joins the tour as a guest of the alumni association, none of the tours includes any scheduled instruction or curriculum related to the destinations being visited. The travel tours made available to O's members do not contribute importantly to the accomplishment of O's educational purpose. Rather, O's program is designed to generate revenues for O by regularly offering its members travel services. Accordingly, O's tour program is an unrelated trade or

business within the meaning of section 513(a).

Example 2. N is an organization formed for the purpose of educating individuals about the geography and culture of the United States. It is exempt from federal income tax under section 501(a) as an educational and cultural organization described in section 501(c)(3). N engages in a number of activities to accomplish its purposes, including offering courses and publishing periodicals and books. As one of its activities, N conducts study tours to national parks and other locations within the United States. The study tours are conducted by teachers and other personnel certified by the Board of Education of the State of P. The tours are directed toward students enrolled in degree programs at educational institutions in P, as reflected in the promotional materials, but are open to all who agree to participate in the required study program. Each tour's study program consists of instruction on subjects related to the location being visited on the tour. During the tour, five or six hours per day are devoted to organized study, preparation of reports, lectures, instruction and recitation by the students. Each tour group brings along a library of material related to the subject being studied on the tour. Examinations are given at the end of each tour and the P State Board of Education awards academic credit for tour participation. Because the tours offered by N include a substantial amount of required study, lectures, report preparation, examinations and qualify for academic credit, the tours are substantially related to N's educational purpose. Accordingly, N's tour program is not an unrelated trade or business within the meaning of section 513(a).

Example 3. R is a section 501(c)(4) social welfare organization devoted to advocacy on a particular issue. On a regular basis throughout the year, R organizes travel tours for its members to Washington, DC. While in Washington, the members follow a schedule according to which they spend substantially all of their time during normal business hours over several days attending meetings with legislators and government officials and receiving briefings on policy developments related to the issue that is R's focus. Members do have some time on their own in the evenings to engage in recreational or social activities of their own choosing. Bringing members to Washington to participate in advocacy on behalf of the organization and learn about developments relating to the organization's principal focus is substantially related to R's social welfare purpose. Therefore, R's operation of the travel tours does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 4. S is a membership organization formed to foster cultural unity and to educate X Americans about X, their country of origin. It is exempt from federal income tax under section 501(a) and is described in section 501(c)(3) as an educational and cultural organization. Membership in S is open to all Americans interested in the X heritage. As part of its activities, S sponsors a program of travel tours to X. The tours are divided into two categories. Category A tours are trips to X that are designed to immerse participants in the X history, culture and language. Substantially all of the daily itinerary includes scheduled instruction on the X language, history and cultural heritage, and visits to destinations selected because of their historical or cultural significance or because of instructional resources they offer. Category B tours are also trips to X, but rather than offering scheduled instruction, participants are given the option of taking guided tours of various X locations included in their itinerary. Other than the optional guided tours, Category B tours offer no instruction or curriculum. Destinations of principally recreational interest, rather than historical or cultural interest, are regularly included on Category B tour itineraries. Based on the facts and circumstances, sponsoring Category A tours is an activity substantially related to S's exempt purposes, and does not constitute an unrelated trade or business within the meaning of section 513(a). However, sponsoring Category B tours does not contribute importantly to S's accomplishment of its exempt purposes and, thus, constitutes an unrelated trade or business within the meaning of section 513(a).

Example 5. T is a scientific organization engaged in environmental research. T is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). T is engaged in a long-term study of how agricultural pesticide and fertilizer use affects the populations of various bird species. T collects data at several bases located in an important agricultural region of country U. The minutes of a meeting of T's Board of Directors state that, after study, the Board has determined that non-scientists can reliably perform needed data collection in the field, under supervision of T's biologists. The Board minutes reflect that the Board approved offering one-week trips to T's bases in U, where participants will assist T's biologists in collecting data for the study. Tour participants collect data during the same hours as T's biologists. Normally, data collection occurs during the early morning and evening hours, although the work schedule varies by season. Each base has rustic accommodations and few amenities, but country U is renowned for its beautiful scenery and abundant wildlife. T promotes the trips in its newsletter and on its Internet site and through various conservation organizations. The promotional materials describe the work schedule and emphasize the valuable contribution made by trip participants to T's research activities. Based on the facts and circumstances, sponsoring trips to T's bases in country U is an activity substantially related to T's exempt purpose, and, thus, does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 6. V is an educational organization devoted to the study of ancient history and cultures and is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, V conducts archaeological expeditions around the world, including in the Y region of country Z. In cooperation with the National Museum of Z, V recently presented an exhibit on ancient civilizations of the Y region of Z, including artifacts from the collection of the Z National Museum. V instituted a program of travel tours to V's archaeological sites located in the Y region. The tours were initially proposed by V staff members as a means of educating the public about ongoing field research conducted by V. V engaged a travel agency to handle logistics such as accommodations and transportation arrangements. In preparation for the tours, V developed educational materials relating to each archaeological site to be visited on the tour, describing in detail the layout of the site, the methods used by V's researchers in exploring the site, the discoveries made at the site, and their historical significance. V also arranged special guided tours of its exhibit on the Y region for individuals registered for the travel tours. Two archaeologists from V (both of whom had participated in prior archaeological expeditions in the Y region) accompanied the tours. These experts led guided tours of each site and explained the significance of the sites to tour participants. At several of the sites, tour participants also met with a working team of archaeologists from V and the National Museum of Z, who shared their experiences. V prepared promotional materials describing the educational nature of the tours, including the daily trips to V's archaeological sites and the educational background of the tour leaders, and providing a recommended reading list. The promotional materials do not refer to any particular recreational or sightseeing activities. Based on the facts and circumstances, sponsoring trips to the Y region is an activity substantially related to V's exempt purposes. The scheduled activities, which include tours of archaeological sites led by experts, are part of a coordinated educational program designed to educate tour participants about the ancient history of the Y region of Z and V's ongoing field research. Therefore, V's tour program does not constitute an unrelated trade or business within the meaning of section 513(a).

Example 7. W is an educational organization devoted to the study of the performing arts and is exempt from federal income tax under section 501(a) as an organization described in section 501(c)(3). In connection with its educational activities, W presents public performances of musical and theatrical works. Individuals become members of W by making an annual contribution to W of q dollars. Each year, W offers members an opportunity to travel as a group to one or more major cities in the United States or abroad. In each city, tour participants are provided tickets to attend a public performance of a play, concert or dance program each evening. W also arranges a sightseeing tour of each city and provides evening receptions for tour participants. W views its tour program as an important means to develop and strengthen bonds between W and its members, and to increase their financial and volunteer support of W. W engaged a travel agency to handle logistics

such as accommodations and transportation arrangements. No educational materials are prepared by W or provided to tour participants in connection with the tours. Apart from attendance at the evening cultural events, the tours offer no scheduled instruction, organized study or group discussion. Although several members of W's administrative staff accompany each tour group, their role is to facilitate member interaction. The staff members have no special expertise in the performing arts and play no educational role in the tours. W prepared promotional materials describing the sightseeing opportunities on the tours and emphasizing the opportunity for members to socialize informally and interact with one another and with W staff members, while pursuing shared interests. Although W's tour program may foster goodwill among W members, it does not contribute importantly to W's educational purposes. W's tour program is primarily social and recreational in nature. The scheduled activities, which include sightseeing and attendance at various cultural events, are not part of a coordinated educational program. Therefore, W's tour program is an unrelated trade or business within the meaning of section 513(a).

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 21, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–2154 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8872]

RIN 1545–AW93

Certain Asset Transfers to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that apply with respect to the net built-in gain of C corporation assets that become assets of a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. The regulations generally require the corporation to recognize gain as if it had sold the assets transferred or converted to RIC or REIT assets at fair market value and immediately liquidated. The regulations permit the transferee RIC or REIT to elect, in lieu of liquidation treatment, to be subject to the rules of section 1374 of the Internal Revenue Code and the regulations thereunder. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective February 4, 2000.

Applicability Dates: For dates of applicability, see the Effective Dates portion of the preamble under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Christopher W. Schoen, (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. section 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1672. Responses to this collection of information are required to obtain a benefit, *i.e.*, to elect to be subject to section 1374 of the Internal Revenue Code (Code) and the regulations thereunder.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions as to reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Sections 631 and 633 of the Tax Reform Act of 1986 (the 1986 Act) (Public Law 99–514), as amended by sections 1006(e) and (g) of the Technical and Miscellaneous Revenue Act of 1988 (the 1988 Act) (Public Law 100–647), amended the Code to repeal the *General Utilities* doctrine. The 1986 Act amended sections 336 and 337 of the Code, generally requiring corporations to recognize gain when appreciated property is distributed in connection with a complete liquidation. Section 337(d) directs the Secretary to prescribe regulations as may be necessary to carry out the purposes of *General Utilities* repeal, including rules to "ensure that such purposes shall not be circumvented * * * through the use of a regulated investment company [RIC], a real estate investment trust [REIT], or a tax exempt entity * * *." The transfer of the assets of a C corporation to a RIC or REIT could result in permanently removing the built-in gain inherent in those assets from the reach of the corporate income tax because RIC and REIT income is not subject to a corporate-level income tax if such income is distributed to the RIC or REIT shareholders.

Accordingly, on February 4, 1988, the IRS issued Notice 88–19 (1988–1 C.B. 486). Notice 88–19 announced that the IRS intended to promulgate regulations under the authority of section 337(d) with respect to transactions or events that result in the ownership of C corporation assets by a RIC or REIT with a basis determined by reference to the corporation's basis (a carryover basis). Notice 88–19 served as an "administrative pronouncement," and could be relied upon to the same extent as a revenue ruling or revenue procedure. Notice 88–19 also indicated that the regulations would be applicable retroactively to June 10, 1987. See also Notice 88–96 (1988–2 C.B. 420).

As a result of the issuance of Notice 88–19, many taxpayers have become uncertain about the current law applicable to their transactions, as well as the proper method of making a valid election to be subject to the rules of section 1374 and the regulations thereunder. In order to resolve this uncertainty and to provide taxpayers with guidance, the IRS and Treasury are issuing these temporary regulations.

Explanation of Provisions

These regulations implement Notice 88–19 by providing that when a C corporation (1) qualifies to be taxed as a RIC or REIT, or (2) transfers assets to a RIC or REIT in a carryover basis transaction, the C corporation is treated as if it sold all of its assets at their respective fair market values and immediately liquidated, unless the RIC or REIT elects to be subject to tax under

section 1374. Any resulting net built-in gain is recognized by the C corporation and the bases of the assets in the hands of the RIC or REIT are generally adjusted to their fair market values to reflect the recognized net built-in gain. The regulations do not permit a C corporation to recognize a net built-in loss, and, in this case, the carryover bases of the assets in the hands of the RIC or REIT are preserved.

If the RIC or REIT elects to be subject to treatment under section 1374, its built-in gain, and the corporate-level tax imposed on that gain, is subject to rules similar to the rules applying to the net income of foreclosure property of REITs.

Effective Dates

In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Special Analyses

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

Drafting Information

The principal author of these regulations is Christopher W. Schoen of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.337(d)–5T also issued under 26 U.S.C. 337. * * *

Par. 2. Section 1.337(d)–5T is added to read as follows:

§ 1.337(d)–5T Tax on C assets becoming RIC or REIT assets (temporary).

(a) *Treatment of C corporations*—(1) *Scope.* This section applies to the net built-in gain of C corporation assets that become assets of a RIC or REIT by—

(i) The qualification of a C corporation as a RIC or REIT; or

(ii) The transfer of assets of a C corporation to a RIC or REIT in a transaction in which the basis of such assets are determined by reference to the C corporation's basis (a carryover basis).

(2) *Net built-in gain.* Net built-in gain is the excess of aggregate gains (including items of income) over aggregate losses.

(3) *General rule.* Unless an election is made pursuant to paragraph (b) of this section, the C corporation will be treated, for all purposes including recognition of net built-in gain, as if it had sold all of its assets at their respective fair market values on the deemed liquidation date described in paragraph (a)(7) of this section and immediately liquidated.

(4) *Loss.* Paragraph(a)(3) of this section shall not apply if its application would result in the recognition of net built-in loss.

(5) *Basis adjustment.* If a corporation is subject to corporate-level tax under paragraph (a)(3) of this section, the bases of the assets in the hands of the RIC or REIT will be adjusted to reflect the recognized net built-in gain. This adjustment is made by taking the C corporation's basis in each asset, and, as appropriate, increasing it by the amount of any built-in gain attributable to that asset, or decreasing it by the amount of any built-in loss attributable to that asset.

(6) *Exception*—(i) *In general.* Paragraph (a)(3) of this section does not apply to any C corporation that—

(A) Immediately prior to qualifying to be taxed as a RIC was subject to tax as a C corporation for a period not exceeding one taxable year; and

(B) Immediately prior to being subject to tax as a C corporation was subject to the RIC tax provisions for a period of at least one taxable year.

(ii) *Additional requirement.* The exception described in paragraph (a)(6)(i) of this section applies only to assets acquired by the corporation during the year when it was subject to tax as a C corporation in a transaction that does not result in its basis in the asset being determined by reference to a corporate transferor's basis.

(7) *Deemed liquidation date*—(i) *Conversions.* In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the deemed liquidation date is the last day of its last taxable year before the taxable year in which it qualifies to be taxed as a RIC or REIT.

(ii) *Carryover basis transfers.* In the case of a C corporation that transfers property to a RIC or REIT in a carryover basis transaction, the deemed liquidation date is the day before the date of the transfer.

(b) *Section 1374 treatment*—(1) *In general.* Paragraph (a) of this section will not apply if the transferee RIC or REIT elects (as described in paragraph (b)(3) of this section) to be subject to the rules of section 1374, and the regulations thereunder. The electing RIC or REIT will be subject to corporate-level taxation on the built-in gain recognized during the 10-year period on assets formerly held by the transferor C corporation. The built-in gains of electing RICs and REITs, and the corporate-level tax imposed on such gains, are subject to rules similar to the rules relating to net income from foreclosure property of REITs. See sections 857(a)(1)(A)(ii), and 857(b)(2)(B), (D), and (E). An election made under this paragraph (b) shall be irrevocable.

(2) *Ten-year recognition period.* In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the 10-year recognition period described in section 1374(d)(7) begins on the first day of the RIC's or REIT's taxable year for which the corporation qualifies to be taxed as a RIC or REIT. In the case of a C corporation that transfers property to a RIC or REIT in a carryover basis transaction, the 10-year recognition period begins on the day the assets are acquired by the RIC or REIT.

(3) *Making the election.* A RIC or REIT validly makes a section 1374 election with the following statement: "[Insert name and employer identification number of electing RIC or REIT] elects under § 1.337(d)–5T(b) to be subject to the rules of section 1374 and the regulations thereunder with respect to its assets which formerly were held by

a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of RIC or REIT]." This statement must be signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the first taxable year in which the assets of the C corporation become assets of the RIC or REIT.

(c) *Special rule.* In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or REIT ends after June 10, 1987 but before March 8, 2000, the section 1374 election may be filed with the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Par. 3. In § 1.852–12, paragraph (d) is added to read as follows:

§ 1.852–12 Non-RIC earnings and profits.

* * * * *

(d) For treatment of net built-in gain assets of a C corporation that become assets of a RIC, see § 1.337(d)–5T.

Par. 4. In § 1.857–11, paragraph (e) is added to read as follows:

§ 1.857–11 Non-REIT earnings and profits.

* * * * *

(e) For treatment of net built-in gain assets of a C corporation that become assets of a REIT, see § 1.337(d)–5T.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR Part or section where identified or described	Current OMB control No.
* * *	* *
1.337(d)–5T	1545–1672
* * *	* *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 21, 2000.

Jonathan Talisman,

Acting Assistant Secretary for Tax Policy.

[FR Doc. 00–1894 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8870]

RIN 1545–AV39

General Rules for Making and Maintaining Qualified Electing Fund Elections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 (section 1295 election) to treat the PFIC as a qualified electing fund (QEF), and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis (retroactive election). In addition, this document contains a final regulation that provides guidance under section 1291 to a PFIC shareholder that is a tax-exempt organization. Lastly, this document contains final regulations under section 1293 for calculating and reporting net capital gain by a QEF, and also clarifies the application of the current income inclusion rules of section 1293 to interest in a QEF held through a domestic pass through entity.

DATES: *Effective Date.*

These regulations are effective February 7, 2000.

Applicability Date. In general, these regulations are applicable as of January 2, 1998. For special dates of applicability see § 1.1295–1(k).

FOR FURTHER INFORMATION CONTACT: Margaret A. Fung, (202) 622–3840 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1555. Responses to these collections of information are mandatory for PFIC shareholders that wish to make the section 1295 election to treat the PFIC as a QEF.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

The estimated average annual burden per respondent and/or recordkeeper varies from fifteen minutes to three hours, depending on individual circumstances, with an estimated average of twenty-nine minutes.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On January 2, 1998, the Treasury and the IRS published temporary regulations regarding the section 1295 election and rules applicable to a PFIC shareholder under sections 1291, 1293, 1295 and 1297 (redesignated as section 1298 by the Taxpayer Relief Act of 1997, and hereafter referred to as section 1298) (TD 8750, 63 FR 6). On that same date, the Treasury and the IRS published a notice of proposed rulemaking in the **Federal Register** (63 FR 35). The text of the temporary regulations served as the text of the proposed regulations.

Sections 1291, 1293, 1295 and 1298 were added by the Tax Reform Act of 1986, effective for taxable years of foreign corporations beginning after December 31, 1986. As originally enacted, the section 1295 election was an election made by the PFIC. The Technical and Miscellaneous Revenue Act of 1988 (TAMRA) amended section

1295, effective for taxable years of foreign corporations beginning after December 31, 1986, to change the section 1295 election to a shareholder-by-shareholder election. Sections 1291, 1293 and 1298 were also amended by TAMRA, and sections 1293 and 1298 were further amended by the Omnibus Budget Reconciliation Act of 1993. Section 1298 also was amended by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996. In addition, the Taxpayer Relief Act of 1997 (1997 TRA) amended section 1 to provide categories of long-term capital gain and the maximum rates of tax to which the categories are subject. In certain cases, this amendment affects the calculation of net capital gain for purposes of section 1293.

No written comments were received on the proposed regulations, and no public hearing was requested or held. The proposed regulations are adopted as final regulations as revised by this Treasury Decision. The revisions are summarized in the explanations below.

Explanation of Revisions

A foreign corporation is a PFIC for a taxable year if the foreign corporation satisfies either the income or asset test of section 1297(a) for that year. A foreign corporation is a PFIC under the income test if 75 percent or more of its gross income for its taxable year is passive, or investment-type, income. Alternatively, under the asset test, a foreign corporation is a PFIC if 50 percent or more of the average fair market value of its assets during its taxable year are assets that produce or are held for the production of passive income. A shareholder of a foreign corporation that qualifies as a PFIC is subject to the interest charge regime of section 1291 with respect to certain distributions by the PFIC and certain dispositions of its stock. Generally, a shareholder of a PFIC may avoid the interest charge regime by making a timely election under section 1295 to treat a PFIC as a QEF, in which case the shareholder will be taxed annually pursuant to section 1293 on its pro rata share of the ordinary earnings and net capital gain of the PFIC. Under section 1295(a), a section 1295 election will apply with respect to the PFIC if the PFIC complies with requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gain of the PFIC and otherwise carrying out the purposes of the PFIC provisions.

Section 1295(b)(1), as enacted by TAMRA, provides that a shareholder may make a section 1295 election with respect to a PFIC for any taxable year of the shareholder (shareholder election year). Once made, the election will apply to that year and to all subsequent years of the shareholder unless revoked by the shareholder with the consent of the Secretary. Section 1295(b)(2) prescribes the time for making the election. In general, for the section 1295 election to be applicable to a taxable year, the shareholder must make the election by the due date, as extended under section 6081, for the shareholder's return for that taxable year. However, to the extent provided in the regulations, a section 1295 election may be made for a taxable year after the prescribed due date if the shareholder failed to make a timely election because the shareholder reasonably believed that the foreign corporation was not a PFIC.

Under temporary regulations § 1.1295–1T(d)(1) and (f)(1), the shareholder, as defined in § 1.1291–9(j)(3), of a PFIC makes the section 1295 election by filing a Form 8621 with the shareholder's Federal income tax return by the election due date for the shareholder election year, and by filing a copy of that form with the Philadelphia Service Center. In addition, under temporary regulation § 1.1295–1T(f)(2), the shareholder must file an annual Form 8621 with its Federal income tax return to report the shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF. Temporary regulation § 1.1295–1T(f)(2) also required that a copy of the annual Form 8621 be filed with the Philadelphia Service Center. To reduce taxpayer burden, this final regulation eliminates the requirement for filing a copy of Form 8621 with the Philadelphia Service Center when the shareholder makes the section 1295 election or reports the shareholder's annual pro rata share of the ordinary earnings and net capital gain of the QEF.

In addition, this final regulation clarifies the rule in temporary regulation § 1.1295–1T(c)(2)(ii) for income inclusion by the shareholder of a QEF under section 1293 for any taxable year that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). This final regulation clarifies that in such case, the shareholder is not required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year, and the shareholder shall not be required to satisfy the section 1295 annual reporting requirement for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the section 1295 annual reporting requirement.

The Taxpayer Relief Act of 1997 added section 1296 to provide PFIC shareholders with an alternative method for current income inclusion by making a mark-to-market election with respect to their PFIC stock that qualifies as marketable stock. The election is available to shareholders whose taxable years begin after December 31, 1997 for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. The effect of a mark-to-market election on a section 1295 election will be addressed in subsequent regulations under section 1296. In addition, temporary regulation § 1.1297–3T(c) governing the deemed dividend election by a United States person that is a shareholder of a PFIC will be finalized in a future regulation project.

Notice 98–22 (1998–17 I.R.B. 5) provides that taxpayers will be permitted to apply the rules of the temporary regulations under § 1.1295–1T(b)(4) (section 1295 election by shareholders who file a joint return) and § 1.1295–1T(f) and (g) (procedures for making a section 1295 election and annual information requirements by the PFIC or intermediary) to taxable years beginning before January 1, 1998, for which the statute of limitations on the assessment of tax has not expired and, with respect to § 1.1295–1T(b)(4), if certain consistency requirements are met. The rule of Notice 98–22 has been incorporated into § 1.1295–1(k) of this regulation. Final regulation § 1.1295–1(k) is changed to reflect the special effective dates for § 1.1295–1(b)(4), (f) and (g) as provided by Notice 98–22. Accordingly, Notice 98–22 is obsoleted since the effective date provisions are contained in this final regulation.

Notice 88–125 described the requirements a shareholder must satisfy to make and maintain a section 1295 election for taxable years beginning before January 1, 1998. As a result of the procedures and requirements set forth first in the temporary regulations published on January 2, 1998, and now in these final regulations, Notice 88–125 is obsoleted effective February 7, 2000.

Effect On Other Documents

Notice 88–125 and Notice 98–22 are obsoleted as of February 7, 2000.

Special Analyses

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act (5 U.S.C. chapter 6), that the collection of information contained in these regulations will not have a significant economic impact on substantial number of small entities. The cost of collection of information to small entities is insignificant because the primary reporting burden is on individual PFIC shareholders who make the section 1295 election. Therefore, the collection of information will not have a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of the final regulations is Margaret A. Fung, Office of Associate Chief Counsel (International). 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 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Sec. 1.1291–1 also issued under 26 U.S.C. 1291. * * *

Sec. 1.1293–1 also issued under 26 U.S.C. 1293. * * *

Sec. 1.1295–3 also issued under 26 U.S.C. 1295. * * *

§ 1.1291–1T [Redesignated as § 1.1291–1]

Par. 2. Section 1.1291–1T is redesignated as § 1.1291–1 and the section heading is revised to read as follows:

§ 1.1291–1 Taxation of U.S. persons that are shareholders of PFICs that are not pedigreed QEFs.

* * * * *

§ 1.1293–1T [Redesignated as § 1.1293–1]

Par. 3. Section 1.1293–1T is redesignated as § 1.1293–1 and the newly designated section is amended by revising the section heading and the first sentence of paragraph (c)(1) to read as follows:

§ 1.1293–1 Current taxation of income from qualified electing funds.

* * * * *

(c) Application of rules of inclusion with respect to stock held by a pass through entity—(1) *In general.* If a domestic pass through entity makes a section 1295 election, as provided in paragraph (d)(2) of this section, with respect to the PFIC shares that it owns, directly or indirectly, the domestic pass through entity takes into account its pro rata share of the ordinary earnings and net capital gain attributable to the QEF shares held by the pass through entity. * * *

* * * * *

Par. 4. Section 1.1295–0 is amended by:

1. Revising the introductory text of the section.
2. Removing the entry for the heading of § 1.1295–1T, and adding an entry for the heading of § 1.1295–1 in its place.
3. Revising the entries for § 1.1295–1(d)(3) through (d)(5).
4. Adding entries for § 1.1295–1 (d)(6) and (e) (1) and (2).
5. Removing the entry for the heading of § 1.1295–3T, and adding an entry for the heading of § 1.195–3 in its place.

The revisions and additions read as follows:

§ 1.1295–0 Table of contents.

This section contains a listing of the headings for §§ 1.1295–1 and 1.1295–3.

§ 1.1295–1 Qualified electing funds.

* * * * *

(d) * * *

(3) Indirect ownership of a PFIC through other PFICs.

(4) Member of consolidated return group as shareholder.

(5) Option holder.

(6) Exempt organization.

(e) * * *

(1) General rule.

(2) Examples.

* * * * *

§ 1.1295–3 Retroactive elections.

* * * * *

§ 1.1295–1T [Redesignated as § 1.1295–1]

Par. 5. Section § 1.1295–1T is redesignated as § 1.1295–1 and the newly designated section is amended by:

1. Revising the section heading.
2. Revising paragraph (b)(3)(iv)(B).
3. Adding paragraph (b)(3)(v).
4. Adding a sentence to the end of paragraph (b)(4).
5. Revising paragraphs (c)(2)(ii) and (iii).
6. Revising the third sentence in paragraph (c)(2)(v) *Example 3.*
7. Redesignating paragraphs (d)(3), (d)(4) and (d)(5) as paragraphs (d)(4), (d)(5) and (d)(6), respectively.
8. Adding a new paragraph (d)(3).
9. Revising paragraph (e).
10. In the last sentence of paragraph (f)(1)(iii), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
11. Adding the word "and" at the end of paragraph (f)(1)(ii).
12. Removing paragraph (f)(1)(iv).
13. Adding the word "and" at the end of paragraph (f)(2)(i)(B).
14. In the last sentence of paragraph (f)(2)(i)(C), the language "capital gain; and" is removed and the language "capital gain." is added in its place.
15. Removing paragraph (f)(2)(i)(D).
16. Adding a new paragraph (f)(3).
17. Revising the introductory language of paragraph (g)(3).
18. Adding paragraph (g)(5).
19. Revising the first sentence of paragraph (h).
20. Revising paragraph (k).

The revisions and additions read as follows:

§ 1.1295–1 Qualified electing funds.

* * * * *

(b) * * *

(3) * * *

(iv) * * *

(B) In the case of PFIC stock transferred by an interest holder or beneficiary to a pass through entity in a transaction in which gain is not fully recognized (including pursuant to regulations under section 1291(f)), the pass through entity makes the section 1295 election with respect to the PFIC stock transferred for the taxable year in which the transfer was made. The PFIC stock transferred will be treated as stock of a pedigreed QEF by the pass through

entity, however, only if that stock was treated as stock of a pedigreed QEF with respect to the interest holder or beneficiary at the time of the transfer, and the PFIC has been a QEF with respect to the pass through entity for all taxable years of the PFIC that are included wholly or partly in the pass through entity's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j).

(v) *Characterization of stock distributed by a partnership.* In the case of PFIC stock distributed by a partnership to a partner in a transaction in which gain is not fully recognized, the PFIC stock will be treated as stock of a pedigreed QEF by the partners only if that stock was treated as stock of a pedigreed QEF with respect to the partnership for all taxable years of the PFIC that are included wholly or partly in the partnership's holding period of the PFIC stock during which the foreign corporation was a PFIC within the meaning of § 1.1291–9(j), and the partner has a section 1295 election in effect with respect to the distributed PFIC stock for the partner's taxable year in which the distribution was made. If the partner does not have a section 1295 election in effect, the stock shall be treated as stock in a section 1291 fund. See paragraph (k) of this section for special applicability date of paragraph (b)(3)(v) of this section.

(4) * * * See paragraph (k) of this section for special applicability date of paragraph (b)(4) of this section.

(c) * * *

(2) * * *

(ii) *Effect of PFIC status on election.* A foreign corporation will not be treated as a QEF for any taxable year of the foreign corporation that the foreign corporation is not a PFIC under section 1297(a) and is not treated as a PFIC under section 1298(b)(1). Therefore, a shareholder shall not be required to include pursuant to section 1293 the shareholder's pro rata share of ordinary earnings and net capital gain for such year and shall not be required to satisfy the section 1295 annual reporting requirement of paragraph (f)(2) of this section for such year. Cessation of a foreign corporation's status as a PFIC will not, however, terminate a section 1295 election. Thus, if the foreign corporation is a PFIC in any taxable year after a year in which it is not treated as a PFIC, the shareholder's original election under section 1295 continues to apply and the shareholder must take into account its pro rata share of ordinary earnings and net capital gain for such year and comply with the section 1295 annual reporting requirement.

(iii) *Effect on election of complete termination of a shareholder's interest in the PFIC.* Complete termination of a shareholder's direct and indirect interest in stock of a foreign corporation will not terminate a shareholder's section 1295 election with respect to the foreign corporation. Therefore, if a shareholder reacquires a direct or indirect interest in any stock of the foreign corporation, that stock is considered to be stock for which an election under section 1295 has been made and the shareholder is subject to the income inclusion and reporting rules required of a shareholder of a QEF.

* * * * *

(v) * * *

Example 3. * * * If P does not make the section 1295 election with respect to the FC stock, C will continue to be subject, in C's capacity as an indirect shareholder of FC, to the income inclusion and reporting rules required of shareholders of QEFs in 1999 and subsequent years for that portion of the FC stock C is treated as owning indirectly through the partnership. * * *

(d) * * *

(3) *Indirect ownership of a PFIC through other PFICs*—(i) *In general.* An election under section 1295 shall apply only to the foreign corporation for which an election is made. Therefore, if a shareholder makes an election under section 1295 to treat a PFIC as a QEF, that election applies only to stock in that foreign corporation and not to the stock in any other corporation which the shareholder is treated as owning by virtue of its ownership of stock in the QEF.

(ii) *Example.* The following example illustrates the rules of paragraph (d)(3)(i) of this section:

Example. In 1988, T, a U.S. person, purchased stock of FC, a foreign corporation that is a PFIC. FC also owns the stock of SC, a foreign corporation that is a PFIC. T makes an election under section 1295 to treat FC as a QEF. T's section 1295 election applies only to the stock T owns in FC, and does not apply to the stock T indirectly owns in SC.

* * * * *

(e) *Time for making a section 1295 election—(1) In general.* Except as provided in § 1.1295–3, a shareholder making the section 1295 election must make the election on or before the due date, as extended under section 6081 (election due date), for filing the shareholder's income tax return for the first taxable year to which the election will apply. The section 1295 election must be made in the original return for that year, or in an amended return, provided the amended return is filed on or before the election due date.

(2) *Examples.* The following examples illustrate the rules of paragraph (e)(1) of this section:

Example 1. In 1998, C, a domestic corporation, purchased stock of FC, a foreign corporation that is a PFIC. Both C and FC are calendar year taxpayers. C wishes to make the section 1295 election for its taxable year ended December 31, 1998. The section 1295 election must be made on or before March 15, 1999, the due date of C's 1998 income tax return as provided by section 6072(b). On March 14, 1999, C files a request for a three-month extension of time to file its 1998 income tax return under section 6081(b). C's time to file its 1998 income tax return and to make the section 1295 election is thereby extended to June 15, 1999.

Example 2. The facts are the same as in *Example 1* except that on May 1, 1999, C filed its 1998 income tax return and failed to include the section 1295 election. C may file an amended income tax return for 1998 to make the section 1295 election provided the amended return is filed on or before the extended due date of June 15, 1999.

* * * * *

(f) * * *

(3) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (f) of this section.

(g) * * *

(3) *Annual Intermediary Statement.* In the case of a U.S. person that is an indirect shareholder of a PFIC that is owned through an intermediary, as defined in paragraph (j) of this section, an Annual Intermediary Statement issued by an intermediary containing the information described in paragraph (g)(1) of this section and reporting the indirect shareholder's pro rata share of the ordinary earnings and net capital gain of the QEF as described in paragraph (g)(1)(ii)(A) of this section, may be provided to the indirect shareholder in lieu of the PFIC Annual Information Statement if the following conditions are satisfied—

* * * * *

(5) *Effective date.* See paragraph (k) of this section for special applicability date of paragraph (g) of this section.

(h) *Transition rules.* Taxpayers may rely on Notice 88–125 (1988–2 C.B. 535) (see § 601.601(d)(2) of this chapter), for rules on making and maintaining elections for shareholder election years (as defined in paragraph (j) of this section) beginning after December 31, 1986, and before January 1, 1998. * * *

* * * * *

(k) *Effective dates.* Paragraphs (b)(2)(iii), (b)(3), (b)(4) and (c) through (j) of this section are applicable to taxable years of shareholders beginning after December 31, 1997. However, taxpayers may apply the rules under paragraphs (b)(4), (f) and (g) of this section to a taxable year beginning before January 1,

1998, provided the statute of limitations on the assessment of tax has not expired as of April 27, 1998 and, in the case of paragraph (b)(4) of this section, the taxpayers who filed the joint return have consistently applied the rules of that section to all taxable years following the year the election was made. Paragraph (b)(3)(v) of this section is applicable as of February 7, 2000, however a taxpayer may apply the rules to a taxable year prior to the applicable date provided the statute of limitations on the assessment of tax for that taxable year has not expired.

§ 1.1295–3T [Redesignated as § 1.1295–3]

Par. 6. Section § 1.1295–3T is redesignated as § 1.1295–3 and the newly designated section is amended by revising the section heading and paragraphs (b)(1) and (c)(5)(i) to read as follows:

§ 1.1295–3 Retroactive elections.

* * * * *

(b) * * *

(1) Reasonably believed, within the meaning of paragraph (d) of this section, that as of the election due date, as defined in § 1.1295–1(e), the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year;

* * * * *

(c) * * *

(5) *Time of and manner for filing a Protective Statement*—(i) *In general.* Except as provided in paragraph (c)(5)(ii) of this section, a Protective Statement must be attached to the shareholder's federal income tax return for the shareholder's first taxable year to which the Protective Statement will apply. The shareholder must file its return and the copy of the Protective Statement by the due date, as extended under section 6081, for the return.

* * * * *

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

Affected Section	Remove	Add
1.1293–1(c)(1), last sentence	§ 1.295–1T(j)	§ 1.1295–1(j).
1.1293–1(c)(2)(i), first sentence	§ 1.1295–1T(D)(2)	§ 1.1295–1(d)(2).
1.1295–1(b)(3)(iv)(A)	stock), and	stock) and
1.1295–1(c)(2)(ii), first sentence	1296(a)	1297(a)
1.1295–1(c)(2)(ii), first sentence	1297(b)(1).	1298(b)(1).
1.1295–1(c)(2)(iv), last sentence	§ 1.1293–1T(c).	§ 1.1293–1(c).
1.1295–1(d)(1), last sentence	(d)(5)	(d)(6)
1.1295–1(d)(2)(i)(A), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(2)(ii), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(2)(iii), last sentence	§ 1.1293–1T(c)(1),	§ 1.1293–1(c)(1),
1.1295–1(d)(6), first sentence	§ 1.1291–1T(e),	§ 1.1291–1(e),
1.1295–1(f)(1)(iii), last sentence	QEF calculated the QEF's	PFIC calculated the PFIC's
1.1295–1(g)(1) introductory text, second sentence, last word.	representation—	representations—
1.1295–1(g)(1)(ii)(A)	§ 1.1293–1T(a)(2)	§ 1.1293–1(a)(2)
1.1295–1(h), second sentence	§ 1.1295–1T	§ 1.1295–1
1.1295–1(i)(1)(iii), last sentence	never was made.	was never made.
1.1295–1(i)(3)(iii)	through 1297	through 1298
1.1295–3(a), first sentence	§ 1.1295–1T(j),	§ 1.1295–1(j),
1.1295–3(a), first sentence	§ 1.1295–1T(e)	§ 1.1295–1(e)
1.1295–3(b)(2)	and 1297	and 1298
1.1295–3(c)(3)	§ 1.1295–1T(d).	§ 1.1295–1(d).
1.1295–3(c)(4)(i)(A), third sentence	assessment of taxes	assessment of all PFIC related taxes
1.1295–3(c)(6)(i), last sentence	see § 1.1295–1T(c)(2)(iii).	see § 1.1295–1(c)(2)(iii).
1.1295–3(d)(1), first sentence	section 1296(a)	section 1297(a)
1.1295–3(d)(1), second sentence	section 1296(a)	section 1297(a)
1.1295–3(f)(2)(i) introductory text, second sentence	PFIC and the availability	PFIC and of the availability
1.1295–3(f)(4)(vi), first sentence	§ 1.1295–1T(d).	§ 1.1295–1(d).
1.1295–3(g)(3), first sentence	§ 1.1295–1T(d).	§ 1.1295–1(d).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In 602.101, paragraph (b) is amended by removing the entries for §1.1295–1T and 1.1295–3T and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.1295–1	1545–1555
1.1295–3	1545–1555

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 14, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–1892 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–114–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Virginia permanent

regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment clarifies the State's interpretation of its regulations concerning the disposal of excess spoil. The amendment is intended to improve the operational efficiency of the Virginia program.

EFFECTIVE DATE: January 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment.

By letter dated November 24, 1998 (Administrative Record No. VA–961), the Virginia Department of Mines, Minerals and Energy, Division of Mined Land Reclamation (DMLR) submitted a clarification to its interpretation of its regulations at 4 VAC 25–130–816/817.76 concerning the disposal of excess spoil..

We announced receipt of the proposed amendment in the December 23, 1998, **Federal Register** (63 FR 71049), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on January 22, 1999. No one requested to speak at a public hearing, so no hearing was held. By letters dated December 6, 1999, and January 11, 2000 (Administrative Record No. VA–995 and VA–998, respectively), the DMLR submitted additional information concerning the amendment, and withdrew the proposal to dispose of excess spoil on bond forfeiture sites.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

The proposed clarification is as follows:

The Division of Mined Land Reclamation proposes to clarify the interpretation of 4 VAC 25–130–816.76. The regulation states that excess spoil may be placed on "another area under a permit issued pursuant to the Act, or on abandoned mine lands under contract for reclamation according to the Abandoned Mine Land (AML) Guidelines and approved by the Division of Mined Land Reclamation." The Virginia Division of Mined Land Reclamation interprets this regulation to mean excess spoil from a permitted coal mining operation may be used by the Division of Mined Land Reclamation to reclaim a bond forfeiture site or an AML project site. Through any of the contracting procedures available to the agency, including negotiated, no-cost, or competitively bid contracts, the agency may cause the placement of excess spoil on the forfeiture or AML site in accordance with the provisions of a contract executed between the Division and a contractor. The spoil material removed from the permitted area will be demonstrated to be excess spoil and unnecessary for the achievement of approximate original contour within the permitted area.

The forfeiture or AML project must be:

1. Located in general proximity to the permit area;

2. on the AML inventory list or bond forfeiture list; and

3. referenced in the permit plans, along with the demonstration that the spoil is excess and identified on the permit map. However, the forfeiture or AML site will not be included in the permit acreage; will not be subject to the requirements for permits, performance bonds; and will not delay or otherwise affect bond release on the permitted area.

In the event the contractor fails to perform the work specified in the "no-cost contract", the Division will invoke the appropriate contact sanctions to cause completion of the contract terms. When the contractor and the mine operator happen to be one and the same, the contract will include an additional default provision. In this case, the contract will specify that the mine operator will revise the permit boundary to include the area upon which the excess spoil was placed pursuant to the "no-cost contract." The permit performance bond requirements will become applicable.

In response to our comments on the proposal (Administrative Record Numbers VA–983, 984, and 985), DMLR submitted a letter on December 6, 1999, stating the following:

1. Virginia is proposing to follow the information contained in the letters of November 24, 1997, and November 24, 1998, as well as the AML Guidelines. The November 24, 1997, letter was a previous request by Virginia for OSM to approve an interpretation of 4 VAC 25–13–816.76 that would allow the placement of excess spoil on eligible AML sites pursuant to "no-cost" contracts. In that letter, Virginia committed to apply the following guidelines for such contracts:

—Conditions for placement of spoil are to be outlined in a written agreement between the operator and the regulatory authority;
—Only spoil not necessary to restore AOC or reclaim the permitted area can be placed on abandoned mine lands;
—The spoil is to be disposed of in a technically and environmentally sound fashion;
—The spoil is placed where it will not destroy or degrade features of environmental value;
—Areas for excess spoil disposal must be eligible as noted in the state reclamation plan;
—The mining company will not be required to permit the disposal area;
—No coal can be removed from the disposal area; and,
—The abandoned mine land features reclaimed will be moved to the completed column of AMLIS and noted as Private Reclamation;

2. For financial assurance, the DMLR would require the operator to post an AML bond on the site;

3. The DMLR withdraws its proposal to dispose of excess spoil on bond forfeiture sites; and

4. The DMLR stated that it will not allow fills to be constructed on abandoned mine land.

We disapproved a similar Virginia proposal to allow the placement of excess spoil on unpermitted abandoned sites through "no-cost" contracts in 1990. That proposal was disapproved for three reasons. First, Virginia failed to designate a fund that could be used in the event that the contractor defaults on his reclamation obligations. Second, the proposal did not contain a reference to the Federal AML policy guidelines. Finally, the proposal did not provide for "public notice or participation such as would occur on an AML contract or

mining permit." (55 FR 2240, 2243–4, January 23, 1990).

We have also addressed the placement of excess spoil on adjacent abandoned mine land previously in program amendment decisions in other states. Most recently, we approved a Pennsylvania amendment regarding the placement of excess spoil on abandoned mine sites (March 26, 1999; 64 FR 14610). In that approval, we explained that in order to obtain our approval of "no cost reclamation," such reclamation would have to contain meaningful performance incentives or safeguards to ensure that spoil is placed only where it is needed to restore the approximate original contour (AOC) and where it will not destroy or degrade features of environmental value. In addition, the amendments must require that spoil be placed in an environmentally and technically sound fashion. In short, "no cost reclamation" amendments must provide a degree of security comparable to that afforded by a Federally funded AML reclamation contract. 64 FR at 14617.

The approved Virginia program at 4 VAC 25–130–816/817.76(a) provides that the DMLR may approve, where environmental benefits will occur, the placement of spoil not needed to restore the approximate original contour of the land and reclaim land within the permit area in a manner consistent with the Virginia Coal Surface Mining Control and Reclamation Laws and the Virginia Coal Surface Mining Reclamation Regulations on abandoned mine lands under a contract for reclamation according to the AML Guidelines and approved by the Division. In the amendment, Virginia would authorize the placement of excess spoil, via a no-cost contract, on AML sites. "No-cost" contracts are so called because the contractor receives no moneys from the state AML agency in exchange for performance of the terms of the contract. Rather, the contractor receives the benefit of a free disposal area for its excess spoil in consideration for performance of the needed reclamation. To be approvable, the policies and procedures applicable to such no-cost contracts must provide a degree of security comparable to contracts under Federally-funded AML projects.

In Virginia's amendment, AML lands will be reclaimed in accordance with 4 VAC 25–130–816/817.76(a)(2). That is, all reclamation must be in accordance with the AML Guidelines, regardless of whether the contracts are "no-cost," or Federally funded AML contracts. The DMLR confirmed in its December 6, 1999, letter that the disposal of excess spoil as incidental reclamation will be in accordance with the AML Guidelines, will require an AML bond to be posted, and that excess spoil fills will not be constructed on the AML sites.

We find, therefore, that Virginia's amendment regarding the use of "no-cost contracts" under the approved provisions at 4 VAC 25–130–816/817.76 concerning the disposal of excess spoil and incidental reclamation will afford the same degree of performance incentives and safeguards as Federally funded AML construction projects. We are approving the amendment for the reasons set below.

First, the requirements of 4 VAC 25–130–816/817.76 provide that the placement of the excess spoil under a contract for reclamation must be in accordance with the AML guidelines. These guidelines were published in the **Federal Register** at 61 FR 68777, December 30, 1996.

Second, the amount of excess spoil placed on an abandoned site will only be that needed to reclaim the bond forfeiture or AML site. Therefore, valley, head-of-hollow and durable rock fills will not be constructed on these AML sites, because the amount of material deposited would exceed that necessary to address the reclamation of the forfeited site or AML impacts and problems.

Third, the use of the "no-cost contracts" contains sufficient performance incentives to require compliance with all applicable requirements to ensure that the sites are fully reclaimed. In its December 6, 1999, letter, the DMLR stated that it will require the operator conducting a no-cost contract to post an AML bond on the site. In addition, in its January 11, 2000, letter, the DMLR stated that Virginia's AML grant funds would also be a source available to reclaim a site in the event of operator default or, after the project is released, to correct any failure of the project reclamation.

IV. Summary and Disposition of Comments

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Virginia program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that there appears to be no conflict with MSHA regulations and/or procedures. The U.S. Department of Agriculture, Natural Resources Conservation Service responded and stated that its position is that the amendment be accepted. The U.S. Fish and Wildlife Service (USFWS) responded and stated that it appears that no impacts to Federally listed or proposed species or critical habitat will occur and, therefore, it has no comments on the proposed amendments. The U.S. Forest Service responded that it concurs with the amendment, as long as the AML sites will not lose soil or water quality as a result of this additional spoil material. In response, we note that the DMLR has confirmed in its December 6, 1999, letter that the disposal of excess spoil as incidental reclamation will be in accordance with the AML Guidelines. By following these guidelines, soil and water quality will be protected at least to the extent that they are under Federally-funded AML projects.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to any provisions of the State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the clarifications Virginia proposed pertain to air or water quality standards. Nevertheless, we requested EPA's comments on the proposed amendment. EPA did not provide any comments.

Public Comments

We solicited public comments on the amendment. The Virginia Department of Historic Resources responded that the amendment will not affect historic properties, and that it has no objection to the amendment.

V. Director's Decision

Based on the above findings, we approve the Virginia amendment as submitted by Virginia on November 24, 1998, and clarified on December 6, 1999, and January 11, 2000.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 946 which codifies decisions concerning the Virginia program. We are making this final rule effective immediately to expedite the State program amendment process.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined 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.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 13, 2000.

Tim L. Dieringer,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* *	* * *	* *
November 24, 1998	February 7, 2000	Policy clarification for implementing 4 VAC 25–130–816/817.76.

[FR Doc. 00–2641 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[GGD08–99–068]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor Navigation Canal, mile 4.5, at New Orleans, Orleans Parish, Louisiana. This deviation allows the Port of New Orleans to close the bridge to navigation daily from 7 a.m. until noon and from 1 p.m. until 6 p.m. from Monday, March 6, 2000 through Wednesday, April 19, 2000. This temporary deviation was issued to allow for the repair of the damaged fender system. The draw will open at any time for a vessel in distress. Presently, the draw opens on signal at all times.

DATES: This deviation is effective from 7 a.m. on Monday, March 6, 2000 through 6 p.m. on Wednesday, April 19, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor Navigation Canal in New Orleans, Louisiana, has a vertical clearance of one foot above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels,and other recreational craft. The Port of New Orleans requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving removal and replacement of the portions of the fender system.

This deviation allows the draw of the Norfolk Southern Railroad bascule span drawbridge across the Inner Harbor

Navigation Canal, mile 4.5, at New Orleans, Orleans Parish, Louisiana to remain closed to navigation daily from 7 a.m. until noon and from 1 p.m. until 6 p.m. from Monday, March 6, 2000 through Wednesday, April 19, 2000. The draw shall open on signal at any time for a vessel in distress.

Dated: January 12, 2000.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 00–2678 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF DEFENSE
DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR PART 21

RIN 2900–AI63

Eligibility Criteria for the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The amendments reflect statutory changes which set forth new eligibility criteria that will allow additional individuals to establish eligibility for educational assistance under the Montgomery GI Bill—Active Duty (MGIB); and also reflect statutory provisions concerning the approval of courses leading to alternative teacher certification. This document also makes changes for the purpose of clarification.

DATES: *Effective date:* February 7, 2000.

Dates of application:

October 1, 1996: 38 CFR 21.7020(b)(1); new § 21.7042(f)(3); and newly redesignated § 21.7042(f)(4).

October 9, 1996: §§ 21.4135(b); 21.5021(d)(3); 21.5058(b); 21.5130(d); 21.7020(b)(29); all changes to § 21.7042 except new § 21.7042(f)(3) and newly redesignated § 21.7042(f)(4); §§ 21.7045; 21.7050; 21.7131; 21.7520(b); and 21.7635.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 202–273–7187.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 12, 1998 (63 FR 63253), the Department of Defense (DOD), the Department of Transportation (Coast Guard), and the Department of Veterans Affairs (VA) proposed amending subparts D, G, K, and L of 38 CFR part 21, as set forth in the SUMMARY portion of this document.

DOD, the Department of Transportation (Coast Guard), and VA gave interested persons 60 days to submit comments. VA received one letter from a service organization. The organization noted that the amendments would be beneficial for veterans and concurred in them.

Based on the rationale stated in this document and the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change except to the authority citations for subparts D, G, and L.

DOD is issuing this final rule jointly with VA insofar as it relates to VEAP. DOD funds this program and VA administers it. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. DOD and the Coast Guard fund this program, and VA administers it. The remainder of this final rule is issued solely by VA.

Administrative Procedure Act

Under 5 U.S.C. 553, there is a basis for dispensing with a 30-day delay of the effective date since the changes made by this final rule are restatements of statute, interpretive rules, and nonsubstantive changes for the purpose of clarity.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements associated with this final rule concerning 38 CFR 21.7131(l) and (m) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3520). The proposed rule provided an opportunity to comment to OMB and VA on those requirements, but no comments were received on them. OMB has assigned OMB control number 2900–0607 to those information collection and recordkeeping requirements. Under the collection of information provisions in § 21.7131(l) and (m), a veteran may be required to submit evidence to show that the veteran's election to receive educational assistance under the MGIB was a valid one, and the date of VA's receipt of the evidence may have an effect on the effective date of an award of educational assistance.

OMB assigns a control number to each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We are displaying the OMB control number assigned to the collection of information in this final rule at the end of § 21.7131.

Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not cause educational institutions to make changes in their activities and has minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs that this final rule affects are 64.117, 64.120, and 64.124. This final rule also affects the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 28, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: July 13, 1999.

P.A., Tracey,

Vice Admiral, USN Deputy Assistant Secretary (Military Personnel Policy) Department of Defense.

Approved: October 18, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commander for Human Resources.

For the reasons set forth above, 38 CFR part 21 (subparts D, G, K, and L) is amended as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4135, paragraph (b) is added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election was made pursuant to procedures described in § 21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

* * * * *

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

3. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 32, 36, unless otherwise noted.

§ 21.5021 [Amended]

4. In § 21.5021, paragraph (d)(3) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,".

5. In § 21.5058, the authority citation for paragraph (b) is revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3018A, 3018B, 3018C, 3202(l), 3222)

§ 21.5130 [Amended]

6. In § 21.5130, paragraph (b) is amended by removing "(except paragraph (b))".

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

7. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

8. In § 21.7020, paragraph (b)(29)(iii) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; the authority citation for paragraph (b)(29) is revised; paragraph (b)(1)(iv) is added immediately after the authority citation for paragraph (b)(1)(iii); and paragraph (b)(44) is added immediately after the authority citation for paragraph (b)(43), to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(1) * * *

(iv) When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by § 3.6(b) of this chapter) and who made the election described in § 21.7042(a)(7) or (b)(10), the term *active duty* when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(29) * * *

(Authority: 38 U.S.C. 3002(8), 3452(c))

* * * * *

(44) *Date of election.* The term *date of election* means:

(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and

(ii) For an election that must be submitted to VA, the date VA receives the written election.

(Authority: 38 U.S.C. 3018C(a)(5); sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

9. In § 21.7042, paragraph (f)(3) is redesignated as paragraph (f)(4); newly redesignated paragraph (f)(4) is amended by removing "Paragraph (f)(2) of this section does" and adding, in its place, "Paragraphs (f)(2) and (f)(3) of this section do", by removing "Coast" and adding, in its place, "United States Coast", and by removing "Reserve" and adding, in its place, "Senior Reserve"; paragraph (a)(7) is added immediately after the authority citation for paragraph (a)(6); paragraph (b)(10) is added immediately after the authority citation for paragraph (b)(9); new paragraph (f)(3) and paragraph (g)(5) are added; and paragraphs (f)(2), (g)(1), and (g)(4) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) * * *

(7) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(b) * * *

(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(f) * * *

(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon graduation from:

(i) The United States Military Academy;

(ii) The United States Naval Academy;

(iii) The United States Air Force Academy; or

(iv) The United States Coast Guard Academy.

(3) Except as provided in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 is not eligible for educational assistance under 38 U.S.C. chapter 30, if the individual enters on active duty—

(i) Before October 1, 1996; or

(ii) After September 30, 1996, and while participating in that program received more than $2,000 for each year of participation.

(Authority: 38 U.S.C. 3011(c), 3012(d))

* * * * *

(g) *Reduction in basic pay.* (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

* * * * *

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

(5) If through administrative error, or other reason—

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

(Authority: 38 U.S.C. 3002, 3011, 3012, 3018)

10. In § 21.7045, the heading and introductory text are revised; and paragraph (d) is added, to read as follows:

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in this subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) of this section.

* * * * *

(d) *Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program.*—(1) *Making an election.* To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must—

(i) Have elected to do so before October 9, 1997;

(ii) Have been a participant (as that term is defined in § 21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;

(iii) Have been on active duty on October 9, 1996; and

(iv) Receive an honorable discharge.

(2) *Election.* The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) *$1,200 collection.* An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C)

11. In § 21.7050, paragraph (a)(1) is amended by removing "paragraph (b)" and adding, in its place, "paragraphs (b) and (c)", and by removing "of this part"; paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; the authority citation for paragraph (b) is revised; and a new paragraph (c) is added to read as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3031(e))

(c) *Time limit for some members of the Army and Air National Guard.* (1) If a veteran or servicemember establishes eligibility for the educational assistance payable under this subpart by making the election described in § 21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in § 21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in § 21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

12. In § 21.7131, paragraphs (l) and (m) are added to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(l) *Eligibility established under § 21.7042 (a)(7) or (b)(10).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either § 21.7042 (a)(7) or (b)(10). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7042(g)(4) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 5113; sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(m) *Eligibility established under 21.7045(d).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7045(d)(3) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 3018C(a), (b), 5113) (The Office of Management and Budget has approved information collection requirements in this section under control number 2900–0607.)

Subpart L—Educational Assistance for Members of the Selected Reserve

13. The authority citation for part 21, subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

14. In § 21.7520, paragraph (b)(23)(iv) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; and the authority citation for paragraph (b)(23) is revised to read as follows:

§ 21.7520 Definitions.

* * * * *

(b) * * *

(23) * * *

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

* * * * *

15. In § 21.7635, paragraph (y) is redesignated as paragraph (z); and a new paragraph (y) is added. to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the reservist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in § 21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in § 21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

[FR Doc. 00–2637 Filed 2–4–00; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes to Processing Instructions for Nonautomation Mail and Revisions to Letter Tray Labels

AGENCY: Postal Service.

ACTION: Final Rule.

SUMMARY: This final rule revises Domestic Mail Manual (DMM) sections M130 and M610 with amendments to optional processing instructions for nonautomation mail. New standards provide a means for mailers to exclude their letter-size mail from any automated processing involved with initial distribution of mail, including tabbing and labeling machines, barcode sorters, and optical character readers. This final rule also revises DMM section M013, with inclusion of an optional endorsement line, "MANUAL ONLY," and section M032, with changes to the second line of tray labels for Presorted First-Class Mail letters and Presorted Standard Mail (A) letters.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Jamie Gallagher, (202) 268–4031.

SUPPLEMENTARY INFORMATION: On October 25, 1999, the Postal Service published for public comment in the **Federal Register** a proposed rule (FR 64 57419–57421) that expanded provisions for mailers who wanted nonautomated (manual) processsing and revised Line 2 of letter tray labels for First-Class Mail and Standard Mail (A). The Postal Service also invited comments on the proposed rule from interested parties and accepted comments until December 9, 1999. This final rule contains the DMM standards adopted by the Postal

Service after review of the comments that were submitted.

Evaluation of Comments Received

The Postal Service received eight pieces of correspondence offering comments on the October 25 proposed rule. Respondents included major mailing associations, large business mailers, and mailing agents.

Based on additional costs expected to be incurred by mailers, four commenters objected to the use of facing slips on package bundles. An alternative to facing slips was proposed by two other commenters who suggested the use of optional endorsement lines with "DO NOT AUTOMATE" printed on mailpieces. For package identification of letter-size mail, the use of optional endorsement lines will be added to the DMM revisions. Mailers must use either facing slips or optional endorsement lines printed with "MANUAL ONLY" on all required bundles that are to be excluded from automated processing.

Three commenters objected to postal tabbing, claiming that marketing effectiveness could be compromised. Similarly challenged was the right of the Postal Service to change the physical properties of a mailpiece. However, according to the view of the Postal Service's General Counsel, the legal authority to make reasonable alterations to mailpieces in order to facilitate processing of the mail is implied within the Postal Service's express authority to provide for an efficient system of sorting and delivery of the mail. Tabbing by the Postal Service, placing labels on mailpieces, and spraying barcodes on letters are included in the Postal Service's authority to exercise powers incidental, necessary, or appropriate to the performance of its assigned functions.

One commenter noted problems from postal labeling when information on Standard Mail (A) carrier route pieces had been covered by LMLM (letter mail labeling machine) labels. This commenter suggested adding carrier route mail to the category of mailings that could be excluded from automated processing. This proposal will be deferred for publication and comment in the **Federal Register** at a later time.

Processing letter-size mail has been revolutionized during the past decade as the Postal Service deployed a network of automated equipment. Optical character readers, barcode sorters, tabbing machines, and labeling machines are among the pieces of automated equipment currently used to process mail. Today's infrastructure provides many efficiencies which contribute to holding postage rates down. Nationally, the average cost for a postal plant to process 1,000 letters through automation is around $5. Manual sortation, the alternative, costs the Postal Service nearly $60 per 1,000 letters.

In an effort to minimize more costly and slower manual processing, the Postal Service will attempt to sort machineable pieces through automation. Letter-size mailpieces, for which an automated postage rate has not been paid, are considered potentially upgradeable and subject to automated processing. Even though 95 percent of letter-size mail is processed through automation, some mailers prefer to have their mailpieces sorted manually. New processing instructions will provide a means for mailers to indicate if presorted pieces should be processed exclusively by manual operations. To maintain the handling request through downstream postal processes, mailers must use facing slips or optional endorsement lines with "Manual Only" applied to required packages. Additionally, letter tray labels for First-Class Mail and Standard Mail (A) are revised, with Line 2 reflecting new information.

The Domestic Mail Manual is revised as follows. These changes are incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 5552(a): 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

* * * * *

M013 Optional Endorsement Lines

1.0 USE

1.1 Basic Standards

* * * * *

[Add a new category with the following Sortation Levels and OEL examples to end of table.]

Optional Tray Level for Manual Processing:

5-digit—5-DIGIT 23456 MANUAL ONLY

3-digit—3-DIGIT 090 MANUAL ONLY

ADC (3-digit ZIP Code Prefix)—ALL FOR ADC 103 MANUAL ONLY

ADC (5-digit ZIP Code)—ALL FOR ADC 98765 MANUAL ONLY

Mixed ADC (3-digit ZIP Code prefix)—MIXED ADC 630 MANUAL ONLY

Mixed ADC (5-digit ZIP Code)—MIXED ADC 12345 MANUAL ONLY

* * * * *

M030 Containers

* * * * *

M032 Barcoded Labels

* * * * *

[Amend Exhibit 1.3a as follows:]

EXHIBIT 1.3A.—3-DIGIT CONTENT IDENTIFIER NUMBERS

Class and mailing	CIN	Human-readable content line
FIRST-CLASS MAIL		
FCM Letters—Presorted (Basic Preparation)		
[Revise the following CIN and human-readable content lines:]		
5-digit trays	250	FCM LTRS 5D NON BC.
3-digit trays	253	FCM LTRS 3D NON BC.
ADC trays	256	FCM LTRS ADC NON BC.
mixed ADC trays	259	FCM LTRS NON BC WKG.
[Add a new category:]		
FCM Letters—Presorted (Nonautomation Processing)		
5-digit trays	267	FCM LTRS 5D MANUAL.
all other required trays	268	FCM LTRS MANUAL ONLY.
STANDARD MAIL (A)		
STD Letters—Presorted (Basic Preparation)		
[Revise the following CIN and human-readable content lines:]		
5-digit trays	550	STD LTRS 5D NON BC.
3-digit trays	553	STD LTRS 3D NON BC.
ADC trays	556	STD LTRS ADC NON BC.
mixed ADC trays	559	STD LTRS NON BC WKG.
[Add a new category:]		
STD Letters—Presorted (Nonautomation Processing)		
5-digit trays	604	STD LTRS 5D MANUAL.
all other required trays	605	STD LTRS MANUAL ONLY.

* * * * *

M100 First-Class Mail (Nonautomation)

* * * * *

M130 Presorted First-Class Mail

1.0 BASIC STANDARDS

* * * * *

1.5 Processing Instructions

[Revise 1.5 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

2.0 REQUIRED PREPARATION—LETTER- AND CARD-SIZED PIECES

* * * * *

[Revise 2.3 to read as follows:]

2.3 Tray Line 2

Line 2:

a. 5-digit: "FCM LTRS 5D NON BC."

b. 3-digit: "FCM LTRS 3D NON BC."

c. ADC: "FCM LTRS ADC NON BC."

d. Mixed ADC: "FCM LTRS NON BC WKG."

[Add new 2.4 and 2.5 to read as follows:]

2.4 Optional Tray Line 2

For trays that mailers do not want automated under 1.5:

a. 5-digit: "FCM LTRS 5D MANUAL."

b. All other required trays: "FCM LTRS MANUAL ONLY."

2.5 Package Identification

Required 5-digit, 3-digit, ADC, and mixed ADC packages must be identified with facing slips on which "MANUAL ONLY" is printed or with optional endorsement lines under M013.

* * * * *

M600 Standard Mail (Nonautomation)

M610 Presorted Standard Mail (A)

1.0 BASIC STANDARDS

* * * * *

1.4 Processing Instructions

[Revise 1.4 to read as follows:]

If a mailer prefers that the USPS not automate letter-size pieces presented at Presorted rates, then the mailer must use the Line 2 tray label information in 2.4. The mailer must prepare all required trays in 2.2.

2.0 REQUIRED PREPARATION—LETTER- AND CARD-SIZED PIECES

* * * * *

[Revise 2.3 to read as follows:]

2.3 Tray Line 2

Line 2:

a. 5-digit: "STD LTRS 5D NON BC."

b. 3-digit: "STD LTRS 3D NON BC."

c. ADC: "STD LTRS ADC NON BC."

d. Mixed ADC: "STD LTRS NON BC WKG."

[Add new 2.4 and 2.5 to read as follows:]

2.4 Optional Tray Line 2

For trays that mailers do not want automated under 1.5:

a. 5-digit: "STD LTRS 5D MANUAL."

b. All other required trays: "STD LTRS MANUAL ONLY."

2.5 Package Identification

Required 5-digit, 3-digit, ADC, and mixed ADC packages must be identified with facing slips on which "MANUAL ONLY"is printed or with optional endorsement lines under M013.

* * * * *

[An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–2604 Filed 2–4–00; 8:45 am]

BILLING CODE 7710–12–P

Proposed Rules

Federal Register
Vol. 65, No. 25
Monday, February 7, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

RIN 0584–AC25

National School Lunch Program and School Breakfast Program: Alternatives to Standard Application and Meal Counting Procedures

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations governing the procedures for determining eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. Existing regulations provide school food authorities with two alternatives to the standard requirements for the annual determinations of eligibility for free and reduced price school meals and daily meal counts by type, commonly termed "Provision 1" and "Provision 2". This proposed rule would allow for an extension of Provision 2 procedures and provide for a new alternative, "Provision 3". For schools choosing to participate in one of the alternate application and meal counting procedures, this proposed rule would also codify the alternate counting and claiming provisions of Public Law 103–448 which have been implemented, and codify revisions to the counting and claiming provisions authorized by Public Laws 104–193 and 105–336. This proposed rule would streamline program operations for program administrators and participants. State agency and school food authority recordkeeping burdens are expected to decrease because the determinations of eligibility for free and reduced price meals would not be made as frequently. In addition, for those schools electing to participate, this proposed rule may increase participation in nutritious school meal programs, thereby helping students develop lifelong healthy eating habits. A primary reason for the increase in participation is that local schools would be offering meals at no charge to all enrolled students.

DATES: To be assured of consideration, comments must be postmarked on or before April 7, 2000.

ADDRESSES: Comments must be sent to: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302 or via E:Mail at CNDPROPOSAL@fns.usda.gov. All written submissions, as well as the Regulatory Impact Analysis, will be available for public inspection in Room 1007, 3101 Park Center Drive, Alexandria, Virginia during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Jane Whitney or Todd Barrett at the above address, by telephone at 703–305–2620. Copies of the Regulatory Impact Analysis are available upon request.

SUPPLEMENTARY INFORMATION:

Background

Generally, schools must collect applications on an annual basis from the households of enrolled children and make annual determinations of their eligibility for free or reduced price school meals. They must also count the number of free, reduced price, and paid meals at the point of service on a daily basis in order to claim Federal reimbursement. However, school food authorities may participate in alternatives to annual eligibility determinations and daily meal counts by type (free, reduced price and paid) which are intended to reduce some of this administrative burden. These alternatives are commonly referred to as Provision 1, Provision 2 and Provision 3. This proposed rule would make no changes to Provision 1, codify changes to Provision 2 and codify the implementation of Provision 3. A brief description of each Provision as authorized by the National School Lunch Act (42 U.S.C. 1759a) follows:

Provision 1

Provision 1 reduces application burdens by allowing free eligibility to be certified for a 2 year period in schools where at least 80 percent of the children enrolled are eligible for free or reduced price meals.

Notification of program availability and certification of children already certified eligible for free meals may be reduced to once every 2 consecutive school years. All other households must be notified of program availability, provided a meal application, and allowed to apply for meal benefits each school year.

All other program rules are unchanged. Provision 1 schools are not required to serve meals at no charge to all students. Schools must continue to record daily meal counts of meals served to children by type as the basis for calculating reimbursement claims.

Provision 2

Provision 2 reduces application burdens and simplifies meal counting and claiming procedures by allowing a school to establish claiming percentages that apply for a 4-year period provided the school serves meals to participating children at no charge.

During the first, or base, year the school takes applications, makes eligibility determinations, and records meal counts by type, just as it would under normal program rules, with the exception that all reimbursable meals are provided at no charge to the students. During the next 3 years, the school counts only the total number of reimbursable meals served each day. Reimbursement during these years is determined by applying the percentages of free, reduced price and paid meals during the corresponding month of the base year to the total meal count for the claiming month. After the base year, the school makes no new eligibility determinations (for as long as they remain operating under the Provision). The base year is included as part of the 4 years. At the end of each 4-year period, the State agency may approve an extension for 4 years if the income level, as adjusted for inflation, of the school's population has remained stable.

Schools electing this alternative must pay the difference between Federal reimbursement and the cost of providing all meals at no charge. The statute requires that money to pay for this difference must be from sources other than Federal funds.

Provision 3

Provision 3 reduces application burdens and meal counting and

claiming procedures by allowing a school to simply receive a comparable level of Federal cash and commodity assistance each year as it received in the base year, provided the school serves all meals at no charge. Provision 3 schools serve reimbursable meals to all participating children at no charge for a period of up to 4 years, or longer if an extension is granted.

Provision 3 schools receive the level of Federal cash and commodity support paid to them for the last year in which they made eligibility determinations and meal counts by type under regular program rules; this is the base year. For each successive year that the school remains in Provision 3, the level of Federal cash and commodity support is adjusted to reflect changes in enrollment and inflation. After the base year, the school makes no new eligibility determinations for as long as it remains in the Provision. The base year is not included as part of the 4 years. At the end of each 4 year period, the State agency may approve 4-year extensions if the income level, as adjusted for inflation, of the school's population has remained stable.

Schools electing this alternative must pay the difference between Federal reimbursement and the cost of providing all meals at no charge. The statute requires that money to pay for this difference must be from sources other than Federal funds. In order to make this procedure available promptly, Provision 3 was implemented via memorandum in 1995.

History of the Provisions and Changes Being Implemented

No changes are being made to Provision 1. The changes being made to Provisions 2 and 3 are in response to statutory changes and the experience gained from operating the Provisions via policy memorandum.

Under current regulations for Provision 2, schools that elect: (a) To serve reimbursable meals at no charge to all children for 3 successive school years regardless of the household's ability to pay, and (b) to pay the difference between the meal service costs and the Federal reimbursement, from sources other than Federal funds, may conduct public notification and make eligibility determinations once every 3 school years. During the first year of the 3-year cycle (the base year), free and reduced price eligibility determinations are made and daily meal counts are taken according to the eligibility status of the child served, even though all meals are served at no charge. In the second and third year of the cycle, schools are not required to count meals by type. Instead, they submit claims based on the total number of meals served each month. The school's reimbursement amount is determined by applying the percentages of free, reduced price and paid meals served during the corresponding month of the first year to the total meal count for the claim month.

Section 111 of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, amended section 11(a)(1)(C) of the NSLA to allow an extension to the initial 3-year Provision 2 cycle by an additional 2 years if the school food authority established, through available and approved socioeconomic data, that the income level of the population of the school remained stable since free and reduced price applications were taken. These extensions were limited to those schools participating under Provision 2 on November 2, 1994. Subsequently, section 704(a) of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted August 22, 1996, removed the November, 1994 limitation so that any Provision 2 school could extend the initial 3-year cycle an additional 2 years with subsequent 5-year cycles provided the available and approved socioeconomic data established that the income level of the school's population has remained stable. At the end of the 3 year/2year cycle, and each subsequent 5-year cycle, the State agency could approve an extension of Provision 2 procedures if the school food authority established that the income level of the school's population remained stable when compared with the income level of the school's population during the base year.

Section 103 of Public Law 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998, enacted on October 31, 1998, amended section 11(a)(1)(C) and (D) of the NSLA to make the period of operation for Provision 2 consistent with that of Provision 3. The statute eliminated Provision 2's initial 3-year cycle, 2-year extension and subsequent 5-year extensions. As a result of Public Law 105–336, the initial cycle for operating Provision 2 is now 4 years. In addition, State agencies may grant extensions to operate Provision 2 for an additional 4 years in those schools where the available and approved socioeconomic data identifies that the income level of the school's population has remained stable. Schools currently operating Provision 2 must finish their cycle under previous requirements and the new 4-year timeframe will be effective upon application for, and approval of, an extension.

Public Law 103–448 added a new alternative, Provision 3, to section 11(a)(1)(E) of the NSLA. Under Provision 3, schools elect to serve reimbursable meals at no charge to all children for a period of 4 successive school years. Provision 3 schools receive the level of Federal cash and commodity assistance paid to them for the last year in which they made eligibility determinations, known as the base year, adjusted annually to reflect changes in enrollment and inflation. The implementation of Provision 3 does not affect a school food authority's receipt of bonus commodities. At the end of the 4-year cycle (not including the base year) and each subsequent 4-year cycle, the State agency may approve an extension of Provision 3 procedures if the school food authority can establish that the income level of the school's population remained consistent with the income level of the population of the school during the base year. The school food authority of a school implementing Provision 3 must use available and approved socioeconomic data and submit the data to their State agency for approval. (Approved data sources are discussed later in this preamble.)

An analysis of this proposed rule identified that it would offer significant benefits for school food authorities and households. During non-base years, school food authorities of schools operating under Provisions 2 and 3 would experience a significant reduction of administrative burdens associated with making eligibility determinations, counting meals by type (free, reduced price and paid), operating a payment system for children eligible for reduced price and paid meals and conducting verification. Similarly, households with children enrolled in schools under Provision 2 or Provision 3 would not be required to submit paperwork documenting their eligibility.

The analysis also finds that State agencies would experience some additional burden through this rule due to the responsibility of making extension determinations and reporting information on usage of Provision 2 and Provision 3 and possibly having to report information on extension determinations. The analysis asserts that once State agencies and school food authorities are accustomed with Provisions 2 and 3, the extension determination burden on State agencies would be minimal and the reporting burdens would be noticeable, but not significant. However, the significant

reduction in burdens by eliminating eligibility determinations, meal counts by type, verification and a payment system for reduced price and full price meals offsets the insignificant increase in burdens associated with extension determinations.

The remainder of this preamble discusses the proposed changes to the regulations to reflect the extensions for Provision 2 schools and to codify the implementation of Provision 3.

Definitions

Section 245.2(f-2), *Operating day*, would be added to the definitions to define an operating day as a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

Section 245.2(j), *Special assistance certification and reimbursement alternatives*, would be amended to remove the reference to "two" optional alternatives and replace it with "three" optional alternatives.

Provision 2

Section 245.9(b), *Provision 2*, of this proposed rule would restate the existing regulatory language although a number of editorial changes would be made to parallel the new Provision 3, including the addition of a definition of "Provision 2 base year". The proposal would define the Provision 2 base year to mean the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as outlined under § 245.9(c)(2)(iii). Under a Provision 2 base year, schools would offer reimbursable meals to all students at no charge. The Provision 2 base year would be included in the 4-year cycle. The Department would take this opportunity to provide Provision 2 schools with additional areas of flexibility as discussed below.

Section 245.9(b)(1), *Free meals*, would clarify that schools participating under Provision 2 must serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge.

Section 245.9(b)(2), *Cost differential*, would restate the existing requirement that the school food authority of a school participating in Provision 2 must pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and Federal reimbursement.

Section 245.9(b)(3), *Meal counts*, would set forth the meal counting methodology for Provision 2. Paragraph (b)(3)(i), *Monthly percentages*, would restate the existing meal count provision which converts the monthly meal counts, by type, in the first year into percentages which are then applied to the total counts for the corresponding months in the second, third and fourth consecutive years and in years for which extensions of Provision 2 have been granted. Paragraph (b)(3)(ii), *Annual percentages*, would add a new method of meal claiming based on annual percentages.

Under the annual percentages option, the actual number of all meals served, by type, during the base year would be converted to an annual percentage for each type of meal. Schools that begin Provision 2 at a point in time other than the beginning of a school year would be required to complete the equivalent of a full school year to develop annual percentages. For example, a school implementing Provision 2 in January and continuing through June of one school year, would be required to take applications and obtain meal counts by type for September through December of the following school year in order to develop annual percentages for each meal type. These three percentages would then be multiplied by the total number of all meals served (free, reduced price and paid) in each month of the second, third and fourth consecutive school years, and in years for which extensions of Provision 2 have been granted, in order to calculate reimbursement claims for free, reduced price and paid meals each month.

Extension of Provision 2

Under § 245.9(c), *Extension of Provision 2*, of this proposed rule, State agencies may authorize a school food authority to continue under Provision 2 without taking new free and reduced price applications and daily meal counts by type. Schools approved for Provision 2 would continue to use the claiming percentages calculated during the most recent base year.

State agencies would be allowed to grant such an extension of Provision 2 if the school food authority could establish through available and approved socioeconomic data that the income level of the school population, as adjusted for inflation, remained stable, declined or had only negligible improvement since free and reduced price applications and meal counts by type were taken in the most recent base year. (The terms "negligible improvement" and "approved data sources" are discussed later in this preamble.) State agencies would be responsible for reviewing all available and approved socioeconomic data submitted by school food authorities requesting an extension. Prior to granting or denying an extension, State agencies would be required to evaluate the data to determine whether it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, remained stable, declined or had only negligible improvement.

State agencies would not be allowed to approve an extension for those schools for which the available and approved socioeconomic data did not reflect the school's population, was not equivalent data for the base year and last year of the current cycle or indicated more than a negligible improvement in the income level of the school's population after adjusting for inflation. (The term "negligible improvement" is discussed later in this preamble.) Such schools would be required to: (1) Return to standard meal counting and claiming procedures; (2) establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price determinations and counting meals as described in § 245.9(b); (3) establish a new Provision 2 base year by using the streamlined process as described in § 245.9(c)(2)(iii); or, (4) establish a new Provision 3 base year or streamlined base year as described in § 245.9(d) and (e)(2)(iii).

Under the option presented in paragraph (c)(2)(ii), *Establish a new base year*, schools electing to continue to operate Provision 2 would be allowed to establish a new Provision 2 base year by taking new free and reduced price applications, making new eligibility determinations and taking meal counts, by type, for the first year of the new Provision 2 cycle. These meal counts would be converted into claiming percentages pursuant to § 245.9(b)(3). These percentages would then be used for the purpose of claiming reimbursement in the remaining years of the 4 year cycle and any extensions.

Alternately, paragraph (c)(2)(iii), *Establish a streamlined base year*, would permit a streamlined application process for schools with changed socioeconomic data that choose to continue to operate Provision 2 or begin operating Provision 3. In lieu of taking new free and reduced price applications for the enrolled population, such schools could, in accordance with guidance established by FNS, determine program eligibility on the basis of household size and income for a statistically valid portion of the school's

enrollment as of October 31, or other date approved by the State agency, of the first year of the new cycle. Using the data obtained from the sample, enrollment based claiming percentages would be developed and applied to total daily meal counts of reimbursable meals at the point of service. These percentages represent the proportion of the school's population that are eligible for free, reduced price and paid meals. These enrollment based claiming percentages would then be used for each year of the new cycle and any extensions.

Finally, paragraph (c)(2)(iv), *Establish a Provision 3 base year,* would permit schools with changed socioeconomic conditions to convert to Provision 3. Schools electing to convert to Provision 3 would be allowed to establish a Provision 3 base year by taking new free and reduced price applications, making new eligibility determinations and taking meal counts, by type, for the first year of the new Provision 3 cycle by using the procedures outlined in § 245.9(d) or by using the streamlined base year procedures set forth in § 245.9(e)(2)(iii).

Provision 3

Under § 245.9(d), *Provision 3,* of this proposed rule, schools implementing Provision 3 would be required to serve reimbursable meals at no charge to all participating children in the school for up to 4 successive school years. Schools would be required to continue serving complete meals that meet the requirements for reimbursement during the successive years. Provision 3 schools would receive Federal cash and commodity assistance at the same level as the school received in the base year, as adjusted annually for enrollment, inflation and, if applicable, operating days when the difference in operating days affects the number of meals. This proposed rule would define the term base year to mean the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as outlined in § 245.9(e)(2)(iii). The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meals may be charged for meals during the Provision 3 base year. School food authorities are encouraged to consider offering all meals at no charge during the base year in order to optimize participation and develop a level of cash and commodity assistance that may be more reflective of participation during successive years. This proposed rule would also require upward and downward adjustments to be made in those school years when the number of operating days in the current year differs from the number of operating days in the base year and the difference affects the number of meals. These adjustments are further discussed under § 245.9(d)(4).

To participate as a Provision 3 school, several conditions would apply. Paragraph (d) sets forth these operating conditions. Commenters are asked to pay particular attention to these operating conditions and address their feasibility in written comments to this rulemaking.

Paragraph (d)(1), *Free meals,* would require participating schools to serve reimbursable meals, as determined by a point of service observations, to all participating children at no charge during non-base years of operation.

Paragraph (d)(2), *Cost differential,* would require the school food authority of a participating school to pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and the establishment of Federal reimbursement.

Paragraph (d)(3), *Meal counts,* would require schools to take daily meal counts of reimbursable meals at the point of service during the non-base years of operation. Commenters should note that this provision would require total meal counts at the point of service, not meal counts by eligibility category.

Unlike the standard meal counting system and Provision 2, these meal counts would not provide the basis for financial assistance under Provision 3. However, the Department believes that total meal counts at the point of service remain a good management tool. Obtaining meal counts would provide a system to evaluate whether there has been a decline in participation, compared to the base year, even though a school food authority would continue to receive the same level of reimbursement and commodities as their base year (adjusted for inflation, enrollment and operating days if the difference in operating days affects the number of meals). Such a decline in participation may be indicative of decreased meal quality and would require the State agency to consider providing technical assistance. For this reason, this proposed rule would require meal counts to be retained at the local level per § 245.9(g).

Records of such counts would be required to be maintained for the period of time specified under paragraph (g). The submission of the total daily meal counts on the school food authority's Claim for Reimbursement or through other means could be required by the State agency if the State agency believed that submission of such data would enhance program integrity. In addition, school food authorities must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from base year. If participation declines significantly, the school food authority shall provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard application and meal counting procedures, as appropriate.

The Department also recognizes that there may be situations in residential child care institutions (RCCIs) where meal counts would not be necessary for a system operating under Provision 3. For example, an RCCI may have a fixed number of children enrolled and be a closed campus with a pre-plate meal service. In such a case, the RCCI may not experience a change in enrollment or participation from year-to-year and would not need to obtain total daily meal counts. Therefore, the Department would provide State agencies the discretion to approve such sites for Provision 3 without the requirement to obtain a total daily meal count during "non-base" years of operation.

Paragraph (d)(4), *Annual adjustments,* would require the State agency or school food authority to make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The annual adjustments for enrollment would be effected by comparing the school's current year enrollment as of October 31, to the school's base year enrollment as of October 31. The adjustments would reflect the changes in the number of children with access to the program(s). State agencies would be responsible for checking actual enrollment annually on October 31 of each year against the October 31 enrollment for the base year in order to determine any changes that must be made in reimbursement and the value of commodities for the school year. The State agency would be allowed to approve the use of data from an alternate date if it is determined to be a more accurate reflection of the school's enrollment or if it accommodates the reporting system in effect for that State agency. In addition, State agencies could, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If

more frequent enrollment adjustments were calculated, it would be required to be applied for both upward and downward adjustments. The adjustments to enrollment would begin with the month the enrollment data is collected and applied to any outstanding Claims for Reimbursement.

The Department adjusts the rates of reimbursement for meals served in schools annually to reflect changes in inflation. Therefore, the adjustment for inflation for the Provision 3 school meals would automatically occur when the school food authority's adjusted meal counts would be processed through the State agency's claim payment system using updated reimbursement rates. The formula for calculating commodity assistance would remain unchanged.

Paragraph (d)(4) also would require an adjustment for the number of operating days to the extent that the number of operating days in the current school year differs from the number of operating days in the base year and the difference affects the number of meals. Under this paragraph (d)(4), State agencies would be required to make an upward adjustment to the level of cash and commodity assistance for any "non-base" school year in which the number of operating days is more than the number of operating days in the base year and the difference in operating days affects the number of meals. Similarly, paragraph (d)(4) would require State agencies to make a downward adjustment to the level of cash and commodity assistance for any "non-base" school year in which the number of operating days is less than the number of operating days in the base year and the difference affects the number of meals. No operating day adjustment would be required if the number of operating days in a non-base year is the same as the number of operating days in the base year. Under this proposed rule, operating days means those days that meals are offered to eligible children under the National School Lunch Program or School Breakfast Program.

Paragraph (d)(4) would allow two methods for making adjustments to the base year level of assistance as a result of differences in the number of operating days between the base year and subsequent years when the difference in operating days affects the number of meals. In cases where the school food authority would be paid based on meal counts (*i.e.*, base year meal counts adjusted by enrollment), State agency or local officials would multiply the average daily meals claimed, by type, for the current school year by the difference in the number of serving days between the base year and the current school year. The resulting adjustments would be reflected in the final Claim for Reimbursement submitted by the school food authority for the school year or on the respective monthly Claim for Reimbursement. When making monthly adjustments, each month's Claim for Reimbursement would be adjusted for changes in the number of operating days between the month being reported in the current year and the corresponding month of the base year. In cases where the school food authority would be paid the value of base year assistance, State agency or local officials would multiply the dollar amount otherwise payable (i.e., the base year level of assistance as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year. Such adjustments could also be made on a monthly basis.

Paragraph (d)(5), *Reporting requirements*, would require the State agency to submit to the Department on the monthly FNS–10, the Report of School Program Operations, the number of meals, by type, as an adjustment to base year meal counts (adjusted for enrollment and, if applicable, operating days) or the number of meals, by type, constructed to reflect the adjusted level of cash assistance.

This proposed rule outlines two methods to effect payment of reimbursement for Provision 3 schools. The preferred method would be for State agencies or school food authorities to make adjustments to school food authorities base year meal counts on the monthly Claim for Reimbursement. Changes due to enrollment and/or operating days would be reflected in the adjusted meal counts and inflation would be automatically adjusted by the State agency's payment system using the annually updated reimbursement rates. A second option would be for State agencies to provide the same level of cash assistance as the base year, adjusted for enrollment, operating days and inflation.

Under paragraph (e), *Extension of Provision 3*, of this proposed rule, the State agency could allow a school to continue under Provision 3 for subsequent 4-year periods without taking new applications and daily meal counts by type. State agencies would be able to grant an extension of Provision 3 if the school food authority could establish, through available and approved socioeconomic data, that the income level, as adjusted for inflation, of the population of the school remained stable, declined, or had only negligible improvement since the most recent base year. The school food authority of a school implementing Provision 3 would be required to use available and approved socioeconomic data and submit the data to their State agency for approval. (Approved data sources are discussed later in this preamble). These schools would continue to receive reimbursement and commodity assistance at the same level as the school received in the base year, adjusted for changes in inflation, enrollment and, if applicable, operating days.

State agencies would not be allowed to approve an extension for those schools in which the available and approved socioeconomic data does not reflect the school's population, was not equivalent data or the data indicated more than a negligible improvement in the income level of the school population, as adjusted for inflation. Such schools would be required to: (1) Return to standard meal counting and claiming procedures; (2) establish a new Provision 3 base year as described in § 245.9(d); (3) establish a new Provision 3 base year by using the streamlined process as described in § 245.9(e)(2)(iii); or, (4) establish a new Provision 2 base year or streamlined base year as described in § 245.9(b) and (c)(2)(iii).

Paragraph (e)(2)(iii), *Establish a streamlined base year*, would permit a streamlined application process for schools with changed socioeconomic data that choose to continue to operate under Provision 3. In lieu of taking new free and reduced price applications for the enrolled population, such schools could, in accordance with guidance established by the Secretary, determine program eligibility on the basis of family size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. Using the data obtained from the sample, enrollment-based claiming percentages would be developed and applied to total daily meal counts of reimbursable meals at the point of service during the new base year. Schools choosing to implement the streamlined base year for Provision 3 would be required to offer meals at no charge to all participating students during the newly established base year. In the subsequent 4-year period, the school would continue to receive reimbursement and commodity assistance at the same level as the school received in the newly established streamlined base year, adjusted for changes in inflation, enrollment and, if applicable, operating days.

Paragraph (e)(2)(iv), *Establish a Provision 2 base year*, would allow

schools which were not approved for an extension of Provision 3 to establish a Provision 2 base year or Provision 2 streamlined base year.

Approved Data Sources

Paragraphs (c)(1) and (e)(1) of § 245.9 of this proposed rule would permit Provision 2 and Provision 3 school food authorities to use available and approved socioeconomic data to determine whether the income level of the school population, as adjusted for inflation, remained consistent with the income level of the population of the school in the last school year for which the school accepted applications (i.e., the base year).

Pre-approved sources of socioeconomic data would include local data developed or collected by city or county zoning and economic planning offices or unemployment data for the area from which the school draws attendance which measures the stability of the income level of the school's population. Local food stamp data could also be used. Because schools may determine children eligible for free meals based on information obtained directly from the agency administering food stamps that the children are from households certified to receive food stamps (hereafter referred to as "direct certification"), a school that had been using direct certification would be allowed to produce a current direct certification roster for the school. The percentage of enrolled students directly certified during the base year would be compared to the percentage of enrolled students currently eligible because of their participation in the Food Stamp Program to assess whether the income level of the school's population remained stable. (Since this method uses food stamp participation data, and food stamp eligibility standards account for inflation, this method would inherently adjust for inflation). Additional sources include Food Distribution Program on Indian Reservations data, statistical sampling of the school's population using the application or equivalent income measurement process and the Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation).

If a school food authority of a participating school would like to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data sources would have to be approved by FNS. The school food authority of a participating school would submit a request to use alternate sources of socioeconomic data through their State agency to their FNS Regional Office for review and approval. School food authorities would be required to use socioeconomic data reflective of the area from which the school draws attendance or data reflective of the school's population. In selecting alternate sources of socioeconomic data, school food authorities would also need to consider: (a) Whether the data effectively measures the income level of the school's population and (b) whether equivalent data is available for both the base year and the current year. Generally, census data would only be acceptable if it provided information reflective of both the base year and the current year.

Under this proposed rule, the local school food authority of a participating school would be responsible for collecting and evaluating the socioeconomic data to establish that the income level of the school's population remained stable, declined or had only negligible improvement. State agencies would be responsible for reviewing and approving or denying the socioeconomic data as submitted by school food authorities. FNS Regional Offices would be responsible for approving the use of alternate sources of socioeconomic data. For both pre-approved and alternate sources of socioeconomic data, relative measurements (such as the percentage of families living below the Federal Poverty Level or median family income) would be considered a better measurement of the income composition of the area than absolute measures (such as the number of households living below the Federal Poverty Level). Under this proposed rule, the State agency's approval of an extension would allow a school to continue receiving reimbursement through one of the alternate meal counting procedures. Therefore, State agencies are reminded that, under this proposed rule, any improper payments resulting from a State agency's approval of extension requests would be subject to the recovery provisions of § 210.19(c).

Paragraphs (c)(1)(ii) and (e)(1)(ii) would establish that the income level of the school population would be considered to have had negligible improvement if there is a 5.0% or less improvement over the base year (after adjusting for inflation) in the level of the socioeconomic indicator which is used to establish the income level of the school's population. The Department believes that "5.0% or less" allows for minor fluctuations in data and at the same time ensures that any meaningful improvement in economic conditions would preclude a school from receiving an extension.

For example, 74 percent of the school's population is certified to receive food stamps in the base year. Five percent of 74 percent is equal to 3.7 percentage points ($.05 \times .74 = .037$). Therefore, an extension may be granted if the percentage of the population currently certified to receive food stamps is no lower than 70.3% ($.74 - .037 = .703$ or 70.3%). Note that rounding rules do not apply. In this example, current food stamp eligibility standards account for inflation so separate inflationary adjustments would not need to be made.

The Free and Reduced Price Policy Statement

Section 245.9(f), *Policy statement requirement*, of this proposed rule would require school food authorities to amend their Free and Reduced Price Policy Statement to include a list of all schools participating in Provision 1, Provision 2, and Provision 3 and, for each school, the initial year of implementing the provision, the years the cycle is expected to remain in effect, the year the provision must be reconsidered, and the available and approved socioeconomic data that will be used in the reconsideration. Additionally, the school food authority would be required to certify that the school(s) meet the criteria for participating in the special assistance provisions, as specified in § 245.9, as appropriate.

Record Retention

Section 245.9(g), *Recordkeeping*, of this proposed rule would require that school food authorities of schools participating under Provision 2 or Provision 3 retain records for the base year and succeeding years for specified time periods. The Department believes that it is imperative that accurate records be retained by the school food authority of a school implementing one of the provisions. Accordingly, paragraph (g) stipulates that the failure to maintain records would result in the State agency requiring the school to return to standard meal counting and claiming procedures because the level of federal reimbursement could not be justified. The failure to maintain records could also result in fiscal action. Be aware that base year records would need to be retained during the time Provision 2 or Provision 3 is in force, plus 3 years for audit or review purposes. Commenters should note that while base year records would be retained for

several years, other records such as free and reduced price applications and verification documentation, would not be generated during non-base years and, therefore, would provide some offset to the base year record retention.

Paragraph (g)(1), *Base year records*, would require school food authorities of schools participating under Provision 2 or Provision 3 to retain all records as listed in § 210.15(b) and § 220.7(e) which relate to the base year and support subsequent year earnings. In addition, enrollment data for the base year would have to be retained for schools under Provision 3. Such base year records would be required to be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed base year data. For example, a school may have established a Provision 2 base year in school year 1998–99, received two 4-year extensions, then returned to standard procedures school year 2010–11. If the school food authority of the Provision 2 school filed the final Claim for Reimbursement for fiscal year 2010 in November 2010, the Provision 2 base year records would be required to be retained until November 2013 (or longer if there are open audit issues).

School food authorities that conduct a streamlined base year would be required to retain all records related to the statistical methodology and the determination of new claiming percentages. Such records would have to be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed streamlined base year data. In either case, if audit findings had not been resolved, base year and extension records would have to be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

Paragraph (g)(2), *Non-base year records*, would require school food authorities of schools participating under Provision 2 or Provision 3 to retain records of total daily meal counts of reimbursable meals, edit checks, on-site review documentation. In addition, school food authorities of schools participating under Provision 3 would be required to retain records of annual enrollment data which is used to adjust the level of assistance and the number of operating days for each Provision 3 school. Such records would have to be retained for three years after submission of the final Claim for Reimbursement for the fiscal year. School food authorities which receive an extension of a provision would be required to retain records of the available and approved socioeconomic data used to determine the income level of the school's population for the base year and year(s) in which extension(s) were made. State agencies would also be required to retain copies of all records of the available and approved socioeconomic data which was used to determine the income level of a school's population for any school granted an extension. Such records would be required to be retained during the period the provision was in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement for the fiscal year which employed base year data. If audit findings have not been resolved, records would have to be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

The provisions of this proposed rule are intended to affect only those reporting or recordkeeping provisions associated with the implementation of Provision 2 or Provision 3. The reporting and recordkeeping requirements associated with the implementation of 7 CFR parts 210 and 220 which are unrelated to the implementation of Provisions 2 or 3 would remain unchanged.

Availability of Documentation

Under redesignated § 245.9(h), *Availability of documentation*, of this proposed rule, school food authorities would be required to make documentation available for purposes of monitoring and audit, upon request. In addition, upon request from FNS, school food authorities under Provision 2 or Provision 3 or a State agency would be required to submit to FNS all data and documentation used in granting extensions. FNS intends to review such data to evaluate the procedures for granting extensions.

Return to Standard Procedures

Under redesignated § 245.9(i), *Return to standard meal counting and claiming*, of this proposed rule, the words "in the following year" would be removed and the words "at any time" would be added in their place to permit schools to return to standard notification and application procedures in the current year if standard procedures better suit the school's program needs.

Puerto Rico and Virgin Islands

Redesignated § 245.9(j), *Puerto Rico and Virgin Islands*, of this proposed rule would be amended to include Provision 3 by adding a reference to paragraphs (c), (d) and (e), as applicable.

Statistical Sampling

Section 245.9(k), *Statistical income measurements*, of this proposed rule would provide the minimum requirements for statistical validity for income measurements used under this section. In order to be considered statistically valid, such measurements must meet five standards. First, the sample frame, or pool of students from which the sample of students will be selected, must be limited to enrolled students who have access to the school meals program. Second, students must be randomly selected from the sample frame. Third, the response rate to the survey shall be at least 80 percent. This means that all information necessary to compute household income as a percentage of the poverty level shall be collected from at least 80 percent of the students in the sample. Fourth, the number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are: (1) Enrolled in the school; (2) have access to the school meals program; and (3) are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample. For example, if a sample's point estimate of the percentage of students who are: (1) Enrolled in the school; (2) have access to the school meals program; and (3) are eligible for free meals is 85 percent and the 95 percent confidence interval ranges from 84.2 percent to 86.5 percent, then it can be asserted with 95 percent confidence that the interval 84.2 percent to 86.5 percent contains the true percentage of students eligible for free meals. Fifth, to minimize statistical bias, data from all households that complete the survey instrument must be used when calculating enrollment based claiming percentages. For example, if 92% of randomly selected students responded to the survey, the school could not discard a selection of 12% of the respondents to bring the response rate to the minimally acceptable rate of 80%.

Action by State Agencies and FNSROs

Section 245.11, *Action by State agencies and FNSROs*, paragraph (h) of this proposed rule would require the State agency to take action to ensure the proper implementation of Provisions 1, 2, and 3. State agencies would be required to remind schools through written notification, sent on or before February 15 of the fourth year of a school's cycle, that the school must

return to standard procedures unless they exercise the option to request an extension. The Department is proposing that the notice be sent by February 15 to allow school food authorities sufficient time to gather appropriate data to request an extension or prepare for returning to standard procedures, a new provision or a streamlined base year.

Under this proposed rule, if a State agency determined at any time that the school or school food authority did not maintain records for a participating school, the State agency would require the school to return to standard application and meal counting procedures.

In addition, a State agency would be required to take action if it determined at any time that: (1) The school or school food authority did not correctly implement Provision 1, Provision 2 or Provision 3; (2) meal quality declined because of the implementation of the provision; (3) participation in the program declined over time; (4) eligibility determinations were incorrectly made; or (5) meal counts were incorrectly taken or incorrectly applied. State agency actions could include technical assistance, adjustments to the level of financial assistance for the current school year, or requiring that the school return to standard application and meal counting procedures, as appropriate.

Paragraph (h)(4), *State agency recordkeeping*, would require State agencies to retain records of the following information annually for the month of October and, upon request, submit to FNS:

1. The number of schools using Provision 2 and Provision 3 for NSLP;
2. The number of schools using Provision 2 and Provision 3 for SBP only;
3. The number of extensions granted to schools using Provision 2 or Provision 3 during the previous school year;
4. The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;
5. The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;
6. The number of extensions granted during the previous year on the basis of local data collected by the city or county zoning and economic planning office;
7. The number of extensions granted during the previous year on the basis of applications collected from enrolled students;
8. The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and
9. The number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary for Food, Nutrition, and Consumer Services has certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would reduce school food authority administrative burdens, streamline program operations and enhance access to the programs by needy children. The Department of Agriculture (the Department or USDA) does not anticipate any significant fiscal impact would result from implementation of this proposed rulemaking.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule, when finalized, would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule would not have retroactive effect unless so specified in the DATES section of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program and the School Breakfast Program, the administrative procedures are set forth under the following regulations (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q) and 220.14(e); (2) School food authority appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS administrative review process as established pursuant to 7 CFR 235.11(f).

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other agencies to comment on proposed information collection.

Written comments on this proposed information collection must be received on or before April 7, 2000.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for the Food and Nutrition Service. A copy of these comments may also be sent to Mr. Robert Eadie at the address listed in the **ADDRESS** section of this preamble. Commenters are asked to separate their comments on the information collection requirements from their comments on the remainder of the proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 to 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having full

consideration if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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.

The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The chart below identifies only the burden hours associated with those sections of 7 CFR part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, that are proposed to be amended under this rule, Alternatives to Standard Application and Meal Counting Procedures. These burden hours represent proposed changes to the current reporting and recordkeeping requirements and incorporate additional proposed requirements.

ESTIMATED ANNUAL RECORDKEEPING BURDEN

	Section 7 CFR	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
SFAs develop notice to parents containing eligibility criteria and maintain documentation. Not required for Provision 2 and 3					
Existing	245.5(a)(1)	20,780	1	.25	5,195
Proposed	245.9(b–e)	20,280	1	.25	5,070
SFA recordkeeping requirements for Provision 2 and 3					
Existing		0	0	0	0
Proposed	245.9(h)	500	1	4	2,000
SFAs amend Free and Reduced Price Policy statement					
Existing	245.9(c)	121	1	.10	12
Proposed	245.9(f)	500	1	.50	250
SFAs develop and distribute a public release with information similar to letter to parents. Not required for Provision 2 and 3					
Existing	245.5(a)(2)	20,780	1	.25	5,195
Proposed	245.9(b–e)	20,280	1	.25	5,070
SFAs develop and distribute supplies of form to be used by households to apply for benefits. Not required for Provision 2 and 3					
Existing	245.6(a)	20,780	1	1	20,780
Proposed	245.9(b–e)	20,280	1	1	20,280
SA recordkeeping requirements for Provision 2 and 3					
Existing		0	0	0	0
Proposed	245.9(g)	54	1	12	648
SAs maintain information on schools participating and extensions granted					
Existing		0	0	0	0
Proposed	245.11(h)	54	1	3	162
Schools distribute applications forms to households. Not required for Provision 2 and 3					
Existing	245.6	101,000	1	.25	25,250
Proposed	245.9	97,000	1	.25	24,250
Schools review applications and make eligibility determinations. Not required for Provision 2 and 3					
Existing	245.6(b)	101,000	41	.052	215,332
Proposed	245.9	97,000	41	.052	206,804
Total Existing Recordkeeping for Part 245					369,782
Total Proposed					362,552
Difference					−7,230

* SA—State agency; SFA—school food authority.

ESTIMATED ANNUAL REPORTING BURDEN

	Section 7 CFR	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
SFAs submit to SAs data and documentation used in granting extensions under Provision 2 and 3					
Existing		0	0	0	0
Proposed	245.9(h)	500	1	.25	125
SAs submit to FNS data and documentation used in granting extensions under Provision 2 and 3					
Existing		0	0	0	0
Proposed	245.11 (h)(4)	54	1	4	216
Total Existing Reporting for Part 245					658,367
Total Proposed					658,708
Difference					+341

* SA—State agency; SFA—school food authority.

Title: 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0026.

Expiration Date: 09/30/2001.

Type of Request: Revision of existing collection

Abstract: This proposed rule would amend the regulations governing the procedures for determining eligibility for free and reduced price meals in the National School Lunch Program and the School Breakfast Program. This proposal would allow for an extension of Provision 2 procedures for an additional 4 years and provide for a new alternative, "Provision 3". Under Provision 3, schools serve reimbursable meals at no charge to all children for 4 consecutive years. State agencies and school food authorities would be required to maintain specific documents that were used to determine the eligibility of a school to serve free meals to all children participating in the school nutrition programs, and also would be required to submit such data to FNS upon request. For schools choosing to participate in one of the alternate application and meal counting procedures, this proposed rule would also codify the alternate counting and claiming provisions of Public Law 103–448 which have been implemented, and codify revisions to the counting and claiming provisions authorized by Public Laws 104–193 and 105–336. State agencies and school food authorities recordkeeping burdens would initially increase but after the "base year" the burden hours are expected to decrease because the determinations of eligibility for free and reduced price meals would not be made as frequently. Reporting hours would also increase marginally due to the requirement to track participation in these provisions.

Executive Order 12372

The National School Lunch Program and the School Breakfast Program, which are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.556, respectively, 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.)

List of Subjects in 7 CFR Part 245

Food assistance programs, Grant programs-education, Civil rights, Food and Nutrition Service, Grant Programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR Part 245 is proposed to be amended as follows:

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

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

Authority: 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

2. In § 245.2:

a. Paragraph (f-2) is added; and

b. Paragraph (j) is amended by removing the word "two" and adding, in its place, the word "three".

The addition reads as follows:

§ 245.2 Definitions.

* * * * *

(f-2) *Operating day* means a day that reimbursable meals are offered to eligible students under the National School Lunch Program or School Breakfast Program.

* * * * *

3. In § 245.9:

a. A heading is added to paragraph (a) to read "*Provision 1.*";

b. Paragraphs (b)–(g) are revised and paragraphs (h)–(k) are added.

The revisions and additions read as follows:

§ 245.9 Special assistance certification and reimbursement alternatives.

* * * * *

(b) *Provision 2.* A school food authority may certify children for free and reduced price meals for up to 4 consecutive school years if a school serves meals at no charge to all enrolled children in that school; provided that public notification and eligibility determinations shall be in accordance with § 245.5 and § 245.3, respectively, during the base year. For purposes of this paragraph (b), the term *base year* means the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as authorized under paragraph (c)(2)(iii) of this section. Schools shall offer reimbursable meals to all students at no charge during the Provision 2 base year. The Provision 2 base year is the first year, and is included in the 4-year cycle. The following requirements apply:

(1) *Free meals.* Participating schools shall serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge.

(2) *Cost differential.* The school food authority of a school participating in Provision 2 shall pay, with funds from non-Federal sources, the difference between the cost of serving lunches

and/or breakfasts at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* During the base year, even though meals are served to participating students at no charge, schools shall take daily meal counts of reimbursable meals by type (free, reduced price, and paid) at the point of service. During the non-base years, participating schools shall take total daily meal counts (not by type) of reimbursable meals at the point of service. For the purpose of calculating reimbursement claims in the non-base years, school food authorities shall establish monthly or annual percentages, as follows:

(i) *Monthly percentages.* The monthly meal counts of the actual number of meals served by type (free, reduced price, and paid) during the base year shall be converted to monthly percentages for each meal type. These percentages shall be derived by dividing the monthly total number of meals served of one meal type (e.g., free meals) by the total number of meals served in the same month for all meal types (free, reduced price and paid meals). The percentages for the reduced price meal and paid meal types shall be calculated exactly as the above example for free meals. These three percentages calculated at the end of each month of the first school year, shall be multiplied by the corresponding monthly meal count total of all reimbursable meals served in the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid meals each month: or,

(ii) *Annual percentages.* The actual number of all meals served by type (free, reduced price, and paid) during the base year shall be converted to an annual percentage for each meal type. Annual percentages shall be based on a full school year, or equivalent number of months. Each percentage is derived by dividing the annual total number of meals served of one meal type (e.g., free meals) by the total number of meals served for all meal types (i.e., free, reduced price and paid). The percentages for the reduced price meal and paid meal types are calculated using the same method as the above example for free meals. These three percentages shall be multiplied by the monthly meal count total of all reimbursable meals served in each month of the second, third and fourth consecutive school years, and applicable extensions, in order to calculate reimbursement claims for free, reduced price and paid meals each month.

(c) *Extension of Provision 2.* At the end of the initial cycle, and each subsequent 4-year cycle, the State agency may allow a school to continue under Provision 2 for another 4 years using the claiming percentages calculated during the most recent base year if the school food authority can establish, through available and approved socioeconomic data, that the income level of the school's population, as adjusted for inflation, has remained stable, declined or has had only negligible improvement since the base year.

(1) *Extension criteria.* School food authorities must submit to the State agency available and approved socioeconomic data to establish whether the income level of a school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: Local data collected by the city or county zoning and economic planning office; unemployment data; local Food Stamp certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application or equivalent income measurement process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). In order to grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the school food authority to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle, and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the school food authority wants to establish the income level of the school's population using alternate sources of socioeconomic data, the use of such data must be approved by FNS. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school's population shall be considered negligible if there is a 5.0% or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* The State agency shall not approve an extension of Provision 2 procedures in those schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5.0% improvement, after adjusting for inflation, in the income level of the school's population. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 2 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. For these schools, the new Provision 2 cycle will be 4 years. Schools electing to establish a Provision 2 base year shall follow procedures contained in paragraph (b) of this section;

(iii) *Establish a streamlined base year.* In accordance with guidance established by FNS, establish a new Provision 2 base year by determining program eligibility on the basis of household size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the school's enrollment must be obtained during the first year of the new cycle. Using the data obtained, enrollment-based claiming percentages representing a proportion of the school's population eligible for free, reduced price and paid benefits shall be developed and applied to total daily meal counts of reimbursable meals at the point of service. For schools electing to participate in Provision 2, these percentages shall be used for claiming reimbursement for each year of the new cycle and any extensions; or

(iv) *Establish a Provision 3 base year.* Schools may convert to Provision 3 using the procedures contained in paragraphs (e)(2)(ii) or (e)(2)(iii) of this section.

(d) *Provision 3.* A school food authority of a school which serves all

enrolled children in that school reimbursable meals at no charge during any period for up to 4 consecutive school years may elect to receive Federal cash reimbursement and commodity assistance at the same level as the total Federal cash and commodity assistance received by the school during the last year that eligibility determinations for free and reduced price meals were made and meals were counted by type—free, reduced price and paid—at the point of service. Such cash reimbursement and commodity assistance shall be adjusted for each of the 4 consecutive school years pursuant to paragraph (d)(4) of this section. For purposes of this paragraph (d), the term *base year* means the last year for which eligibility determinations were made and meal counts by type were taken or the year in which a school conducted a streamlined base year as authorized under paragraph (e)(2)(iii) of this section. Reimbursable meals may be offered to all students at no charge or students eligible for reduced price and paid meal benefits may be charged for meals during the Provision 3 base year. The Provision 3 base year immediately precedes, and is not included in, the 4-year cycle. This alternative shall be known as Provision 3, and the following requirements shall apply:

(1) *Free meals.* Participating schools shall serve reimbursable meals, as determined by a point of service observation, to all participating children at no charge during non-base years of operation.

(2) *Cost differential.* The school food authority of a participating school shall pay, with funds from non-Federal sources, the difference between the cost of serving meals at no charge to all participating children and Federal reimbursement.

(3) *Meal counts.* Participating schools shall take daily meal counts of reimbursable meals served to participating children at the point of service during the non-base years. Such meal counts shall be retained at the local level in accordance with paragraph (g) of this section. State agencies may require the submission of the meal counts on the school food authority's Claim for Reimbursement or through other means. In addition, school food authorities must establish a system of oversight using the daily meal counts to ensure that participation has not declined significantly from the base year. If participation declines significantly, the school food authority shall provide the school with technical assistance, adjust the level of financial assistance received through the State agency or return the school to standard application and meal counting procedures, as appropriate. In residential child care institutions (RCCIs), the State agency may approve implementation of Provision 3 without the requirement to obtain daily meal counts of reimbursable meals at the point of service if:

(i) the State agency determines that enrollment, participation and meal counts do not vary; and

(ii) there is an approved mechanism in place to ensure that students will receive reimbursable meals.

(4) *Annual adjustments.* The State agency or school food authority shall make annual adjustments for enrollment and inflation to the total Federal cash and commodity assistance received by a Provision 3 school in the base year. The adjustments shall be made for increases and decreases in enrollment of children with access to the program(s). The annual adjustment for enrollment shall be based on the school's base year enrollment as of October 31 compared to the school's current year enrollment as of October 31. Another date within the base year may be used if it is approved by the State agency, and provides a more accurate reflection of the school's enrollment or accommodates the reporting system in effect in that State. If another date is used for the base year, the current year date must correspond to the base year date of comparison. State agencies may, at their discretion, make additional adjustments to a participating school's enrollment more frequently than once per school year. If more frequent enrollment is calculated, it must be applied for both upward and downward adjustments. The annual adjustment for inflation shall be effected through the application of the current year rates of reimbursement. To the extent that the number of operating days in the current school year differs from the number of operating days in the base year, and the difference affects the number of meals, a prorata adjustment shall also be made to the base year level of assistance, as adjusted by enrollment and inflation. Upward and downward adjustments to the number of operating days shall be made. Such adjustment shall be effected by either:

(i) Multiplying the average daily meal count by type (free, reduced price and paid) by the difference in the number of operating days between the base year and the current year and subtract that number of meals from the Claim for Reimbursement. In developing the average daily meal count by type for the current school year, schools shall use the base year data adjusted by enrollment; or,

(ii) Multiplying the dollar amount otherwise payable (i.e., the base year level of assistance, as adjusted by enrollment and inflation) by the ratio of the number of operating days in the current year to the number of operating days in the base year.

(5) *Reporting requirements.* The State agency shall submit to the Department on the monthly FNS–10, Report of School Programs Operations, the number of meals, by type, as an adjustment to base year meal counts; or, the number of meals, by type, constructed to reflect the adjusted levels of cash assistance. State agencies may employ either method to effect payment of reimbursement for Provision 3 schools.

(e) *Extension of Provision 3.* The State agency may allow a school to continue under Provision 3 for subsequent 4-year cycles without taking new free and reduced price applications and meal counts by type. State agencies may grant an extension of Provision 3 if the school food authority can establish through available and approved socioeconomic data that the income level of the school's population, as adjusted for inflation, has remained stable, declined, or has had only negligible improvement since the most recent base year.

(1) *Extension criteria.* School food authorities must submit to the State agency available and approved socioeconomic data to establish whether the income level of the school's population, as adjusted for inflation, remained constant with the income level of the most recent base year.

(i) *Available and approved sources of socioeconomic data.* Pre-approved sources of socioeconomic data which may be used by school food authorities to establish the income level of the school's population are: local data collected by the city or county zoning and economic planning office; unemployment data; local Food Stamp certification data including direct certification; Food Distribution Program on Indian Reservations data; statistical sampling of the school's population using the application process; and, Temporary Assistance for Needy Families data (provided that the eligibility standards were the same or more restrictive in the base year as the current year with allowance for inflation). In order to grant an extension using pre-approved socioeconomic data sources, State agencies must review and evaluate the socioeconomic data submitted by the school food authority to ensure that it is reflective of the school's population, provides equivalent data for both the base year and the last year of the current cycle,

and demonstrates that the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement. If the school food authority wants to establish the income level of the school's population using alternate sources of data, the use of such data must be approved by FNS. Data from alternate sources must be reflective of the school's population, be equivalent data for both the base year and the last year of the current cycle, and effectively measure whether the income level of the school's population, as adjusted for inflation, has remained stable, declined or had only negligible improvement.

(ii) *Negligible improvement.* The change in the income level of the school population shall be considered negligible if there is a 5.0% or less improvement, after adjusting for inflation, over the base year in the level of the socioeconomic indicator which is used to establish the income level of the school's population.

(2) *Extension not approved.* Schools for which the available and approved socioeconomic data does not reflect the school's population, is not equivalent data for the base year and the last year of the current cycle, or shows over 5.0% improvement after adjusting for inflation, shall not be approved for an extension. Such schools shall:

(i) *Return to standard meal counting and claiming.* Return to standard meal counting and claiming procedures;

(ii) *Establish a new base year.* Establish a new Provision 3 base year by taking new free and reduced price applications, making new free and reduced price eligibility determinations, and taking point of service counts of free, reduced price and paid meals for the first year of the new cycle. Schools electing to establish a Provision 3 base year shall follow procedures contained in paragraph (d) of this section;

(iii) *Establish a streamlined base year.* In accordance with guidance established by FNS, establish a new Provision 3 base year by providing free meals to all participating children and determining program eligibility on the basis of household size and income for a statistically valid portion of the school's enrollment as of October 31, or other date approved by the State agency. The statistically valid measurement of the schools enrollment shall be obtained during the base year of the new cycle. Using the data obtained, enrollment based claiming percentages, representing a proportion of the school's population eligible for free, reduced price and paid benefits, shall be developed and applied to total daily counts of reimbursable meals at the point of service during the base year. For schools electing to participate in Provision 3, the streamlined base year level of assistance shall be adjusted for enrollment, inflation and, if applicable, operating days for each subsequent year of the new cycle and any extensions; or

(iv) *Establish a Provision 2 base year.* Schools may convert to Provision 2 using the procedures contained in paragraphs (c)(2)(ii) or (c)(2)(iii) of this section.

(f) *Policy statement requirement.* A school food authority of a Provision 1, 2, or 3 school shall amend its Free and Reduced Price Policy Statement, specified in § 245.10, to include a list of all schools participating in Provision 1, 2, or 3, and for each school, the initial year of implementing the provision, the years the cycle is expected to remain in effect, the year the provision must be reconsidered, and the available and approved socioeconomic data that will be used in the reconsideration. The school food authority shall also certify that the school(s) meet the criteria for participating in the special assistance provisions, as specified in paragraphs (a), (b), (c), (d) or (e) of this section, as appropriate.

(g) *Recordkeeping.* School food authorities of schools implementing Provision 2 and Provision 3 shall retain records related to the implementation of the provision. Failure to maintain sufficient records shall result in the State agency requiring the school to return to standard meal counting and claiming procedures and/or fiscal action.

(1) *Base year records.* A school food authority shall ensure that records as specified in § 210.15(b) and § 220.7(e) of this chapter which support subsequent year earnings are retained for the base year for schools under Provision 2 and Provision 3. In addition, records of enrollment data for the base year shall be retained for schools under Provision 3. Such base year records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the base year data. School food authorities that conduct a streamlined base year shall retain all records related to the statistical methodology and the determination of claiming percentages. Such records shall be retained during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed the streamlined base year data. In either case, if audit findings have not been resolved, base year records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(2) *Non-base year records.* A school food authority shall ensure that non-base year records pertaining to total daily meal count information, edit checks and on-site review documentation are retained for schools under Provision 2 and Provision 3. In addition, a school food authority shall ensure that non-base year records pertaining to annual enrollment data and the number of operating days, which are used to adjust the level of assistance, are retained for schools under Provision 3. Such records shall be retained for three years after submission of the final Claim for Reimbursement for the fiscal year. School food authorities that are granted an extension of a provision shall retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extension(s) are made. In addition, State agencies must also retain records of the available and approved socioeconomic data which is used to determine the income level of the school's population for the base year and year(s) in which extensions are made. Such records shall be retained at both the school food authority level and at the State agency during the period the provision is in effect, including all extensions, plus 3 fiscal years after the submission of the last Claim for Reimbursement which employed base year data. If audit findings have not been resolved, records shall be retained beyond the 3-year period as long as required for the resolution of the issues raised by the audit.

(h) *Availability of documentation.* Upon request, the school food authority shall make documentation including enrollment data, participation data, available and approved socioeconomic data that was used to grant the extension, if applicable, or other data available at any reasonable time for monitoring and audit purposes. In addition, upon request from FNS, school food authorities under Provision 2 or Provision 3, or State agencies shall submit to FNS all data and documentation used in granting extensions including documentation as specified in paragraphs (g) and (h) of this section.

(i) *Return to standard meal counting and claiming.* A school food authority may return a school to standard notification, certification and counting procedures at any time if standard procedures better suit the school's program needs. The school food

authority will then notify the State agency.

(j) *Puerto Rico and Virgin Islands.* Puerto Rico and the Virgin Islands, where a statistical survey procedure is permitted in lieu of eligibility determinations for each child, may either maintain their standard procedures in accordance with § 245.4 or may opt for Provision 2 or Provision 3 provided the eligibility requirements as set forth in paragraphs (a), (b), (c), (d) and (e) as applicable, of this section are met.

(k) *Statistical income measurements.* Statistical income measurements that are used under this part shall meet the following standards:

(1) The sample frame shall be limited to enrolled students who have access to the school meals program,

(2) A sample of enrolled students shall be randomly selected from the sample frame,

(3) The response rate to the survey shall be at least 80 percent,

(4) The number of households that complete the survey shall be sufficiently large so that it can be asserted with 95 percent confidence that the true percentage of students who are enrolled in the school, have access to the school meals program, and are eligible for free meals is within plus or minus 2.5 percentage points of the point estimate determined from the sample, and,

(5) To minimize statistical bias, data from all households that complete the survey must be used when calculating the enrollment based claiming percentages for § 245.9(c)(2)(iii) and § 245.9(e)(2)(iii) of this section.

4. In § 245.11, a new paragraph (h) is added to read as follows:

§ 245.11 Action by State agencies and FNSROs.

* * * * *

(h) The State agency shall take action to ensure the proper implementation of Provisions 1, 2. and 3. Such action shall include:

(1) *Notification.* Notifying school food authorities of schools implementing Provision 2 and/or 3 that they must return to standard application and meal counting procedures or apply for an extension under Provision 2 or 3. Such notification must be in writing, and be sent no later than February 15 of the fourth year of a school's current cycle;

(2) *Return to standard procedures.* Returning the school to standard application and meal counting procedures if the State agency determines that records were not maintained; and,

(3) *Technical assistance.* Securing technical assistance, adjustments to the level of financial assistance for the current school year, and returning the school to standard application and meal counting procedures, as appropriate, if a State agency determines at any time that:

(i) The school or school food authority has not correctly implemented Provision 1, Provision 2 or Provision 3;

(ii) Meal quality has declined because of the implementation of the provision;

(iii) Participation in the program has declined over time;

(iv) Eligibility determinations were incorrectly made; or

(v) Meal counts were incorrectly taken or incorrectly applied.

(4) *State agency recordkeeping.* State agencies shall retain the following information annually for the month of October and, upon request, submit to FNS:

(i) The number of schools using Provision 2 and Provision 3 for NSLP;

(ii) The number of schools using Provision 2 and Provision 3 for SBP only;

(iii) The number of extensions granted to schools using Provision 2 or Provision 3 during the previous school year;

(iv) The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;

(v) The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;

(vi) The number of extensions granted during the previous year on the basis of local data collected by a city or county zoning and/or economic planning office;

(vii) The number of extensions granted during the previous year on the basis of applications collected from enrolled students;

(viii) The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and

(ix) the number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

Dated: January 28, 2000.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 00–2550 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–01]

Proposed Revision of Class E Airspace, Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would amend the Englewood, CO, Class E airspace to accommodate the revision of a Standard Instrument Approach Procedure (SIAP) at the Centennial Airport, Englewood, CO.

DATES: Comments must be received on or before March 23, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the

following statement is made: "Comments to Airspace Docket No. 00–ANM–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising a Class E airspace extension at Englewood, CO, in order to accommodate a revised SIAP to the Centennial Airport, Englewood, CO. This amendment would provide a small amount of additional Class E4 airspace at Englewood, CO, to meet current criteria standards associated with the SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and enroute environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the Centennial Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as an extension to a Class D airspace area, are published paragraph 6004, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

* * * * *

ANM CO E5 Englewood, CO [Revised]

Centennial Airport, CO
(Lat. 39°34′13″N, long. 104°50′58″W)

That airspace extending upward from the surface within 3.2-mile radius each side of the 178° bearing from the Centennial Airport extending from the 4.4-mile radius to 14.1 miles south of the airport, and within 2.1 miles each side of the 109° bearing from the Centennial Airport extending from the 4.4-mile radius to 5.5 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Seattle, Washington, on January 24, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–2671 Filed 2–4–00 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209135–88]

RIN 1545–AW92

Certain Asset Transfers to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations which apply with respect to the net built-in gain of C corporation assets that become assets of a Regulated Investment Company [RIC] or Real Estate Investment Trust [REIT] by the qualification of a C corporation as a RIC or REIT or by the transfer of assets of a C corporation to a RIC or REIT in a carryover basis transaction. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for May 10, 2000, at 10 a.m. in the IRS Auditorium, must be received by April 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R [REG–209135–88], Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R [REG–209135–88], Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by

selecting the "Tax Regs" option on the Home Page or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing has been scheduled for May 10, 2000, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Christopher W. Schoen, (202) 622–7750, concerning submissions and the hearing, LaNita Van Dyke (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 7, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.337(d)–5. This information is necessary for the Service to determine whether liquidation treatment or section 1374 treatment is appropriate for the entity for which the regulation applies. The collection of information is required to obtain a benefit, i.e., to elect to be subject to section 1374 in lieu of liquidation treatment. The likely respondents are Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

The regulation provides that a section 1374 election is made by filing a statement, signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return. The burden for the collection of information in § 1.337(d)–5T(b)(3) is as follows: Estimated total annual reporting burden: 50 hours Estimated average annual burden per respondent: 30 minutes Estimated number of respondents: 100 Estimated annual frequency of responses: Once

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. section 6103.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations provide rules that when a C corporation (1) qualifies to be taxed as a RIC or REIT, or (2) transfers assets to a RIC or REIT in a carryover basis transaction, the C corporation is treated as if it sold all of its assets at their respective fair market values and immediately liquidated, unless the RIC or REIT elects to be subject to tax under section 1374 of the Code. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted to the IRS. The IRS and Treasury request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be made available for public inspection and copying.

A public hearing has been scheduled for May 10, 2000 at 10 a.m., in the IRS Auditorium. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply at the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed (signed original and eight (8) copies) by April 19, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Christopher W. Schoen of the Office of Assistant Chief Counsel (Corporate). Other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 11—INCOME TAXES

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.337(d)–5 also issued under 26 U.S.C. 337. * * *

Par. 2. Section 1.337(d)–5 is added to read as follows:

§ 1.337(d)–5 Tax on C assets becoming RIC or REIT assets.

[The text of proposed § 1.337(d)–5 of this section is the same as the text of § 1.337(d)–5T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1895 Filed 2–4–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–100276–97; REG–122450–98]

RIN 1545–AV59; RIN 1545–AW98

Financial Asset Securitization Investment Trusts; Real Estate Mortgage Investment Conduits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to financial asset securitization investment trusts (FASITs). This action is necessary because of changes to the applicable tax law made by the Small Business Job Protection Act of 1996. The proposed regulations affect FASITs and their investors. This document also contains proposed regulations relating to real estate mortgage investment conduits (REMICs). This document provides notice of a public hearing on the proposed regulations.

DATES: Written comments must be received by May 8, 2000. Outlines of topics to be discussed at the public hearing scheduled for May 15, 2000 at 10 a.m., must be received by April 24, 2000.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–100276–97 and REG–122450–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100276–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments via the Internet by selecting the "Tax Regs" option of the IRS Home Page or by submitting them directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in Room 2615, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations other than issues relating specifically to cross border transactions. David L. Meyer at (202) 622–3960 (not a toll-free number) and for issues relating specifically to cross border transactions, Rebecca Rosenberg or Milton Cahn at (202) 622–3870 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by April 7, 2000.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the collection will have a practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information is in § 1.860H–1(b)(2) and § 1.860H–6(e). This information is required to permit qualified entities to elect to become a Financial Asset Securitization Investment Trust and to ensure the holder of the ownership interest in a FASIT properly reports the FASIT's items of income, gain, deduction, loss, and credit. This information will be used to properly administer the provisions of part V of subchapter M of the Code. The collection of information is mandatory. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or record keeping burden: 750 hours.

Estimated average annual burden hours per respondent and/or record-keeper: 5 hours.

Estimated number of respondents and/or record-keepers: 150.

Estimated annual frequency of responses: one annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

Background

Section 1621(a) of the Small Business Job Protection Act of 1996, Public Law 104–188, 110 Stat. 1755 (August 20, 1996) (the Act) amended the Internal Revenue Code (Code) by adding part V (sections 860H through 860L) (the FASIT provisions) to subchapter M of chapter 1. Part V, which is effective September 1, 1997, authorizes a securitization vehicle called a Financial Asset Securitization Investment Trust (FASIT). FASITs are meant to facilitate the securitization of debt instruments, including non-mortgage and mortgage debt instruments.

A solicitation for comments was published in the **Federal Register** for November 4, 1996 (61 FR 56647). The comments received both raised and helped resolve significant issues. The IRS and Treasury request comments on these proposed regulations generally, and specifically request suggestions on how they may be revised to be more easily understood.

Explanation of Provisions

In General

A FASIT is a qualified arrangement that elects FASIT treatment and meets certain requirements concerning the

composition of its assets and the interests it issues to investors. A qualified arrangement can be a corporation (other than a regulated investment company (RIC) as defined in section 851(a)), partnership, trust, or segregated pool of assets.

A FASIT may issue one or more classes of regular interests, which are treated as debt for all purposes of the Code. In addition, each FASIT must have a single ownership interest, which must be held entirely by a non-exempt domestic C corporation (other than a RIC, real estate investment trust (REIT), real estate mortgage investment conduit (REMIC), or subchapter T cooperative).

A FASIT is not subject to income tax. Instead, the tax items of the FASIT are included in the taxable income of the holder of the ownership interest (the Owner). The Owner, (and in some circumstances a person related to the Owner) must recognize gain (if any) when property is either transferred to the FASIT or supports the regular interests.

Congress enacted the FASIT provisions to facilitate the securitization of revolving, non-mortgage debt obligations. An anti-abuse rule incorporated in these proposed regulations is designed to ensure that FASITs are used in a manner that is consistent with this intent and not to create opportunities for tax planning that would not exist but for the enactment of the FASIT provisions and these proposed regulations.

Rules Applicable to the FASIT

Administrative Provisions

1. Background

The administrative provisions have three objectives: (1) ensuring accurate and timely reporting of the FASIT's tax items, (2) ensuring compliance by the FASIT with the operating and qualification rules, and (3) reducing administrative burdens on FASIT interest holders and the IRS.

2. FASIT Election

The proposed regulations provide that a FASIT election is made by attaching a statement to the Owner's Federal income tax return for the taxable year that includes the startup day. No particular form is presently required, but the statement must be specified as a FASIT election, and must identify the arrangement for which the election is made. The IRS and Treasury want to ensure that the persons most affected by a FASIT election have agreed to make the election. Therefore, if the electing arrangement is an entity, the election statement must be signed by the person who would sign the entity's return in the absence of the FASIT election. If the electing arrangement is a segregated pool of assets, the election statement must be signed by each person that owns the assets in the pool for Federal income tax purposes immediately before the startup day.

3. Treatment of FASIT Under Subtitle F

None of the FASIT provisions addresses how a FASIT is treated under subtitle F (Procedure and Administration), which governs matters such as returns, penalties, tax payments, and assessments. One rule considered was to make a FASIT's subtitle F treatment depend on the classification of the electing arrangement. Thus, for example, if a partnership makes a FASIT election, the FASIT is a partnership for purposes of subtitle F. Rather than adopt this approach, which leads to several different administrative regimes for FASITs, the proposed regulations treat each FASIT as a branch or division of its Owner for purposes of subtitle F. Because an Owner must always be a domestic C corporation, this solution results in uniform treatment.

The proposed regulations also make the Owner responsible for reporting interest income with respect to the regular interests which are treated for reporting purposes as collateralized debt obligations (CDOs).

Relationship of a FASIT to the Owner

The FASIT provisions do not provide a general rule defining the relationship between a FASIT and its Owner for non-FASIT Federal income tax purposes. The nature of this relationship may be relevant in determining the Federal income tax consequences of a number of transactions entered into with a FASIT. For example, it is necessary to know the extent to which transactions with a FASIT are treated as transactions with the Owner in determining how the portfolio interest exception applies and whether a change in the Owner of the FASIT results in a realization event for holders of the FASIT regular interests.

The IRS and Treasury considered proposing a general rule to characterize the FASIT's relationship to its Owner for all non-FASIT Federal income tax purposes. Among the alternatives evaluated were (1) treating the FASIT as an entity separate from the Owner; (2) treating the FASIT as a branch of the Owner; and (3) treating the FASIT as an entity for some purposes and as a branch for others.

Each alternative has some underpinning in the statutory scheme. For example, in determining the Owner's taxable income, the FASIT provisions treat a FASIT's assets, liabilities, and tax items as the assets, liabilities, and tax items of the Owner. This supports treating a FASIT as a branch of the Owner. However, the restrictions on what kind of assets may be held and what type of investor interests may be issued apply to the FASIT alone and favor treating a FASIT as a separate entity.

The IRS and Treasury have decided it is better to resolve the nature of the FASIT's relationship with the Owner on an issue-by-issue basis rather than by adopting a single general rule. A few situations (for example, the treatment of a FASIT under subtitle F and the treatment of a FASIT under the portfolio interest rules) are addressed in these proposed regulations. The IRS and Treasury welcome additional comments on whether and how additional rules should detail the FASIT's relationship with the Owner for non-FASIT Federal income tax purposes.

Assets That May Be Held by a FASIT (Permitted Assets)

1. Background

Except during a brief formation period, substantially all of a FASIT's assets must consist of permitted assets. Permitted assets include cash and cash equivalents, debt instruments (and rights to acquire debt instruments), foreclosure property, interest and currency hedges (and rights to acquire interest and currency hedges), guarantees (and rights to acquire guarantees), regular interests in other FASITs, and regular interests in REMICs. The FASIT provisions generally do not allow a FASIT to hold debt instruments issued by the Owner (or a related person).

Several commentators requested guidance on whether certain assets qualified as permitted assets. Other comments focused on the prohibition on Owner debt. In particular, the commentators requested guidance on the extent to which an Owner may guarantee assets or enter into a permitted hedge with the FASIT without violating the prohibition on Owner debt.

2. "Substantially All"

The FASIT provisions *require substantially all* of a FASIT's assets to be permitted assets. Under the proposed regulations, a FASIT meets this test if the aggregate adjusted basis of its assets other than permitted assets is less than one percent of the aggregate adjusted basis of all its assets.

The proposed rule is patterned after a safe harbor rule applicable to REMICs.

The proposed regulations do not incorporate a provision in the REMIC safe harbor that allows a qualified entity that fails the REMIC safe harbor to otherwise demonstrate that it does not own more than a de minimis amount of non-qualified assets. This provision does not appear necessary because a FASIT, unlike a REMIC, can acquire additional permitted assets if it is in danger of failing the *substantially all* test.

3. Cash and Cash Equivalents

The FASIT provisions treat *cash and cash equivalents* as permitted assets. The proposed regulations generally define the phrase *cash and cash equivalents* to mean functional currency. Investment quality debt instruments that are close to maturity are also cash and cash equivalents because of their perceived liquidity.

In response to some commentators, the proposed regulations provide that cash and cash equivalents include shares in U.S.-dollar-denominated money market mutual funds. Although such shares are technically stock, money market mutual funds are practical investments for cash balances pending either distribution to regular interest holders or reinvestment in new debt instruments. The IRS and Treasury, therefore, believe it is appropriate to allow FASITs to hold these investments.

4. Debt Instruments in General

Under the FASIT provisions, a debt instrument must satisfy two criteria to be a permitted asset. First, it has to be a *debt instrument* as defined in section 1275(a)(1) of the Code, which means it has to be a bond, debenture, note or certificate, or other evidence of indebtedness. Second, interest payments (if any) must be made in the manner prescribed for REMIC regular interests. Interest payments on REMIC regular interests must be based on a fixed or variable rate (as allowed in regulations), or must consist of a specified portion of the interest payments on the underlying mortgages held by the REMIC. This means that under the FASIT provisions, interest payments on a debt instrument held by a FASIT must also be payable at a fixed or variable rate, or consist of a specified portion of the interest payments on some underlying debt instrument.

The proposed regulations enumerate the types of debt instruments that meet this standard and therefore qualify as permitted assets. In general, a FASIT may hold fixed-rate debt instruments, specified floating-rate debt instruments, inflation-indexed debt instruments, and credit card receivables. In response to comments received, the proposed regulations also clarify that a FASIT may generally hold beneficial interests in, or coupon and principal strips created from, these instruments.

One commentator requested that the proposed regulations specifically allow FASITs to hold debt instruments that provide for prepayment penalties. The commentator's concern was that prepayment penalties might be viewed as contingent payments that are not fixed or variable interest payments within the meaning of the FASIT provisions. The proposed regulations accommodate this concern by including in the list of permitted debt instruments, debt instruments to which § 1.1272–1(c) (relating to debt instruments that provide for alternate payment schedules) applies. These rules generally accommodate prepayment penalties.

To prevent a FASIT from indirectly holding equity-like or other non-debt interests, the proposed regulations disqualify any debt instrument that can be converted into, or the value of which is based on, anything other than a permitted debt instrument. Impermissible debt instruments include, for example, a debt instrument convertible into stock and a debt instrument the interest payments on which vary based on the spot price of oil. The proposed regulations also do not permit a FASIT to hold debt instruments that, when acquired by the FASIT, are in default due to any payment delinquency unless the Owner reasonably expects the obligor to cure the default (including the payment of any interest and penalties) within 90 days of the date the instrument is acquired by the FASIT. The concern is that a distressed debt instrument may take on the characteristics of equity because the FASIT (and in turn the regular interest holders): (1) may have to look to the obligor's general assets for payment of the instrument, (2) may not receive full payment of the instrument, and (3) may not receive any payment until the satisfaction of claims held by the obligor's other creditors.

5. Participation Interests

One commentator requested guidance on whether a participation interest in a pool of revolving loans would be considered a permitted asset. The commentator pointed out that a participation interest can be based either on a fixed percentage of assets in the pool or on a fixed dollar amount of assets in the pool.

The proposed regulations do not specifically address participation interests. It does not appear that guidance is needed concerning participation interests that are based on a fixed percentage of assets. If a FASIT owns a fixed-percentage participation interest, as the outstanding principal balance of the pool rises and falls, the FASIT may be required to pay additional amounts or entitled to receive distributions to maintain its fixed percentage ownership in the pool. As long as the distributions are paid in cash (or in the form of an otherwise permitted asset), the FASIT's fixed-percentage interest should be considered a fixed-percentage interest in each of the debt instruments in the pool. Thus, the FASIT's fixed-percentage participation interest should qualify as a permitted debt instrument to the extent the underlying debt instruments are themselves permitted assets.

The result under the FASIT provisions is less clear in cases where the participation interest is based on a fixed dollar amount of assets in a pool. In this case, each change in the outstanding balance of the pool would trigger a corresponding change in the FASIT's percentage ownership of the pool. When the size of the pool increases, the FASIT could be viewed as exchanging an interest in each asset in the old pool for a lower percentage interest in each asset in the new pool. This exchange might constitute an impermissible asset disposition. In some cases, this disposition could result in the imposition of the prohibited transaction tax.

While the problem with fixed-dollar participation interests might be resolved by treating a pool as a single asset, a rule specifically allowing a FASIT to hold participation interests may be used as a means of inappropriately avoiding other rules. The IRS and Treasury welcome additional comments on whether and how the need for a FASIT to hold fixed-dollar amount participation interests can be accommodated.

6. Debt Instruments Issued by the Owner

To ensure that the holders of the regular interests are looking primarily to the FASIT, and not the Owner, for payment, the FASIT provisions generally prohibit a FASIT from holding debt instruments issued either by the Owner or a person related to the Owner (collectively, Owner debt). An exception is made for cash equivalents and other instruments specified by regulation.

Under the proposed regulations, Owner debt means more than just debt instruments issued by the Owner. It includes an obligation of the Owner embedded in another instrument, a third party debt instrument the

performance of which is contingent on the performance of Owner debt, and any partial interest in Owner debt such as a principal or coupon strip. Similarly, a debt instrument guaranteed by an Owner is treated as Owner debt, if at the time the FASIT acquires the debt instrument, the Owner is in substance the primary obligor of the debt instrument. See Rev. Rul. 97–3 (1997–1 C.B. 9).

Cash equivalents of the Owner, which are permitted under the FASIT provisions, are limited by the proposed regulations to short-term investment quality debt instruments that are acquired to temporarily invest cash pending either distribution to the FASIT interest holders or re-investment in other permitted assets.

One commentator noted that under the FASIT provisions, it is unclear whether the Owner of two or more FASITs may use regular interests from one FASIT to fund another of its FASITs. If regular interests are considered debt of the Owner, then, technically, the regular interests held by the second FASIT would be impermissible Owner debt. The commentator noted that this form of tiering arrangement is commonly used in REMICs and should be available for use with FASITs. In response to this comment, the proposed regulations allow this type of tiering arrangement. As discussed below, however, tiered FASITs may not be used to achieve benefits that could not be obtained without the FASIT provisions.

7. Foreclosure Property

The FASIT provisions allow a FASIT to hold an asset (foreclosure property) acquired upon the default or imminent default of a permitted debt instrument. The FASIT provisions generally allow a FASIT to retain foreclosure property for a designated grace period of approximately three to four years. After the grace period, a 100-percent tax is imposed on any net income derived from the foreclosure property, including income from its operation or disposition.

In some cases, the property acquired upon foreclosure may independently qualify as another type of permitted asset. Under the proposed regulations, the FASIT may retain this type of foreclosure property beyond the grace period. If the FASIT retains the property beyond the grace period, the property loses its status as foreclosure property at the end of the grace period.

At this point, the proposed regulations require the Owner to recognize gain, if any, on the property as if it had been contributed to the FASIT at the close of the grace period. In addition, after the grace period, the property can no longer qualify for the foreclosure exception to the prohibited transaction rules.

8. Contracts or Agreements in the Nature of a Line of Credit

A FASIT may generally hold as a permitted asset a contract or agreement in the nature of a line of credit as long as the FASIT does not originate the contract or agreement.

9. Guarantees and Hedges

Under the FASIT provisions, a contract may qualify as a permitted asset if it is a permitted hedge or guarantee. The FASIT provisions impose two requirements on permitted hedges and guarantees. First, the contract must be an interest rate or foreign currency notional principal contract, letter of credit, insurance, guarantee against defaults, or other similar instrument. Second, the contract must be reasonably required to guarantee or hedge against the FASIT's risks associated with being the obligor on the interests that the FASIT has issued. Several commentators asked for guidance on the scope of this rule.

The proposed regulations provide guidance as to what constitutes a permitted hedge or guarantee. Rather than focus on the type of contract, the proposed regulations focus on its intended function. Under the proposed regulations, a contract is a permitted hedge or guarantee if the contract is reasonably required to offset differences that specified risk factors may cause between the amount or timing of the cash flows on a FASIT's assets and the amount or timing of the cash flows on the FASIT's regular interests. The specified risk factors are (1) fluctuations in market interest rates, (2) fluctuations in currency exchange rates, (3) the credit quality of the FASIT's assets and regular interests, and (4) the receipt of payments on the FASIT's assets earlier or later than originally anticipated.

Several commentators requested that the proposed regulations list specific types of hedges and guarantees that qualify as permitted assets. Because the proposed regulations define permitted assets and guarantees in terms of their function, the proposed regulations do not include this type of list. Out of a concern that hedges could be used to effect the economic equivalent of a transfer of non-permitted assets to the FASIT, the proposed regulations prohibit a hedge or guarantee from referencing certain assets and indices. In particular, a hedge is not a permitted hedge if it references an asset other than a permitted asset or if it references an index, economic indicator or financial average that is not widely disseminated and designed to correlate closely with changes in one or more of the four specified risk factors.

One commentator requested that the proposed regulations permit the incidental hedging of assets allocable to ownership interests. The commentator suggested that, as a practical matter, an Owner may desire to hedge all of the FASIT's assets inside the FASIT even though the FASIT securitizes less than all of the assets. The proposed regulations accommodate this concern by allowing the FASIT to hedge assets held (or to be held) and liabilities issued (or to be issued). Thus, under the proposed regulations, an Owner can hedge assets inside a FASIT that currently relate to the ownership interest if the assets are being held inside the FASIT because the Owner intends for them to support FASIT regular interests in the future.

The proposed regulations provide special rules for hedges and guarantees entered into with the Owner or a related party. These rules generally allow a FASIT to enter into a hedge (other than a credit hedge) with the Owner (or a related party) if two conditions are met. First, the Owner (or related party) must be a dealer with respect to that type of hedging contract. Second, the Owner must maintain records establishing that the hedge contract was entered into at arm's length. In addition, the special rules provide that an Owner (or a related party) may issue a guarantee to a FASIT if the Owner can demonstrate that, immediately after the guarantee is issued, less than three percent of the value of the FASIT's assets are attributable to Owner guarantees.

Finally, the usefulness of a hedge is diminished if the tax character of the hedge (as an ordinary or capital asset) does not match the tax character of the hedged item. Absent a special rule, disposing of a FASIT hedge could generate capital loss even though the associated assets and liabilities of the FASIT generate ordinary income and deductions. To alleviate this character mismatch, the proposed regulations treat a permitted hedge as an ordinary asset.

Prohibited Transactions

1. Background

The FASIT provisions restrict the types of transactions in which a FASIT may engage through the imposition of a prohibited transactions tax. The tax is equal to 100 percent of the income a FASIT realizes from a prohibited

transaction. The four categories of prohibited transactions set out in the FASIT provisions include the receipt of any income from a loan originated by the FASIT and the receipt of gains from the FASIT's disposition of its assets.

2. Loan Origination

Commentators expressed considerable concern over the lack of statutory guidance on determining whether a debt instrument held by a FASIT has been originated by the FASIT. Commentators noted that debt instruments originated through the Owner's business activities might be deemed to be originated by the FASIT thereby exposing the FASIT to liability for the prohibited transactions tax on any income realized on the instrument.

The proposed regulations contain five safe harbors to limit the scope of the prohibited transaction rules as they relate to loan origination. Under the first safe harbor, a FASIT is not considered to have originated a loan if the FASIT acquires the loan from an established securities market.

Under the second safe harbor, a FASIT is not considered to have originated a loan if the FASIT acquires the loan more than a year after the loan was created.

Under the third safe harbor, a FASIT is not considered to have originated a loan if the FASIT acquires the loan from a person that regularly originates similar loans in the ordinary course of its trade or business. Importantly, this third safe harbor extends to transactions entered into with the Owner (or a related party). As a result, a FASIT that acquires credit card receivables from its Owner (or a related party), or creates new receivables from issuances made on accounts held by the FASIT will not be considered to have originated the receivables to the extent the Owner (or related party) originates similar loans in the ordinary course of its business.

The fourth safe harbor provides that the FASIT will not be treated as originating any new loan it may receive from the same obligor in exchange for the obligor's original loan in the context of a workout.

Finally, a FASIT will not be treated as having originated a debt instrument when it makes a loan pursuant to a contract or agreement in the nature of a line of credit the FASIT is permitted to hold.

3. Substitution or Distribution of Debt Instruments

The FASIT provisions generally impose a prohibited transaction tax on the distribution of debt instruments to the Owner. An exception to this rule exists for distributions to the Owner so long as the principal purpose of the distribution is not the recognition of gain that is due to changes in market conditions while the FASIT held the debt instrument. This rule effectively allows an Owner to reduce over-collateralization so long as the reduction is not designed to obtain a character advantage. Absent this rule, in times of falling market interest rates, an Owner could inappropriately generate capital gain and economically offsetting ordinary loss by disposing of distributed appreciated debt instruments while having the FASIT dispose of related hedges. To clarify the application of the distribution rule, the proposed regulations deem a distribution of a debt instrument to be carried out principally to recognize gain if the Owner (or a related person) sells the substituted or distributed debt instrument at a gain within 180 days of the substitution or distribution. In this case, the distribution will be a prohibited transaction subject to the 100-percent tax.

Consequences of FASIT Cessation

Under the FASIT provisions, the Commissioner may consent to the intended cessation of a FASIT and may grant conditional relief in the case of an inadvertent cessation. There are, however, no comprehensive rules describing the consequences of a cessation. The proposed regulations, therefore, detail how a cessation affects the FASIT, the underlying arrangement that made the FASIT election, the Owner, and the regular interest holders. These rules apply unless a cessation is carried out with the Commissioner's consent, in which case the consent document controls.

Under the proposed regulations the Owner is treated as disposing of the FASIT's assets for their fair market value in a prohibited transaction. Gain, if any, on this deemed distribution is subject to the prohibited transactions tax. Any loss is disallowed. The Owner is also treated as satisfying the regular interests for an amount equal to the lesser of the adjusted issue price or fair market value of the regular interests. This deemed satisfaction will result in cancellation of indebtedness income in cases where the aggregate fair market value of the assets is less than the aggregate adjusted issue price of the regular interests. The underlying arrangement is no longer treated as a FASIT and generally is prohibited from making a new FASIT election. In addition, the underlying arrangement is treated as holding the assets of the terminated FASIT and is classified (for example, as a corporation or partnership) under general tax principles. Finally, the regular interest holders are treated as exchanging their FASIT regular interests for new interests in the underlying arrangement. These new interests are classified under general tax principles, and the deemed exchange of the regular interests for the new interests may require the regular interest holders to recognize gain or loss.

Rules Applicable to Owner

Under the FASIT provisions, an Owner generally determines its taxable income by including the gains, losses, income and deductions of the FASIT and by treating the assets and liabilities of the FASIT as its own. In addition, the Owner must also follow special rules concerning the FASIT's tax-exempt income, prohibited transactions and method of accounting for debt instruments. Few comments were received concerning these provisions.

Under the special rule concerning the method of accounting for debt instruments, a FASIT must use the constant yield method in determining all interest, acquisition discount, original issue discount (OID), market discount, and premium deductions or adjustments. To ensure that the Owner uses a constant yield method for all interest and interest-like items, the proposed regulations require the Owner to compute the amount of interest income and premium offset accruing on debt instruments held in a FASIT under the methodology described in § 1.1272–3(c).

One commentator noted that the FASIT provisions speak in terms of determining the Owner's *taxable income,* and that taxable income, which the Code defines as gross income minus deductions, makes no reference to credits. The proposed regulations, therefore, clarify the extent to which an Owner, in determining its tax, may claim the FASIT's credits. In general, the Owner may claim a credit for taxes paid or deemed paid by the FASIT in the same manner and to the same extent as if the FASIT were an unincorporated branch of the Owner. As discussed below, the allowance of a foreign tax credit is subject to the anti-abuse provisions of this regulation, and other relevant authorities including case law and the potential application of IRS Notice 98–5 (1998–3 I.R.B. 49).

Because the Owner includes the FASIT's tax items in determining its credits and taxable income, the proposed regulations make the Owner (rather than the FASIT) responsible for reporting those items on its Federal

income tax return. The Owner is required to attach a separate statement to its income tax return detailing these items. No specific form is required.

Gain Recognition on Property Transferred to a FASIT

1. Background

The FASIT provisions require Owners (or, in some cases, related persons) to include in income gain (but not loss) realized on the transfer of assets to a FASIT. In general, the amount of gain (if any) that must be included is equal to the value of the transferred asset over its adjusted basis in the transferor's hands. In addition, the FASIT provisions require gain (if any) to be recognized on assets the Owner holds outside of the FASIT but which nonetheless support FASIT regular interests. Significant comments were received regarding the gain recognition rule. In particular, comments were received on the method of valuing property, the scope of the support rule, and the need for a gain deferral rule.

2. Related-Person Gain Recognition Rule

The IRS and Treasury have determined that the gain recognition rule of the FASIT provisions could be circumvented when a related person transfers property to a FASIT. Because the FASIT provisions do not require that the related person be a taxable C corporation (or even that the related person be subject to U.S. tax), the intended corporate-level tax on gain could be avoided by having non-corporate or foreign related persons make asset transfers. In this case, the FASIT provisions could be interpreted as allocating gain to the related person and the economically offsetting losses (usually in the form of premium offset) to the Owner. This misallocation of gain, if allowed, would frustrate the purpose of the gain recognition rule.

The IRS and Treasury considered two ways to address this issue in developing these proposed regulations. One approach would have required any contribution from a related party to the FASIT to be taxed as if it were a deemed sale to the Owner followed by a contribution to the FASIT. This rule would conform the treatment of related person contributions with the treatment of contributions from unrelated persons under section 860I(a)(2). This rule would also ensure that gain upon contribution would be allocated to the taxpayer entitled to the subsequently occurring offsetting economic loss, namely, the Owner. A second approach was to develop regulations that would limit related person treatment to taxable, domestic C corporations and ensure that the misallocation of gain (in the related person) and associated loss (in the Owner) would not produce unwarranted tax benefits.

The proposed regulations adopt the first approach. Under the proposed regulations, transactions between a related person and the FASIT are treated as transactions between the related person and the Owner followed by transactions between the Owner and the FASIT. This rule, however, does not apply in all cases. Transfers of publicly traded property by related persons are unlikely to be abusive. The rule in the proposed regulations, therefore, only applies if the related person transfers property not traded on an established securities market. Thus, for example, the rule applies to a transfer of consumer receivables, but not to a transfer of Treasury bills.

3. Determination of Value for Gain Recognition Purposes

a. *In general.* To determine value for purposes of applying the gain recognition rules, the FASIT provisions divide property into two categories: (1) debt instruments not traded on an established securities market, and (2) all other property. The value of debt instruments not traded on an established securities market is determined by a special statutory rule. The value of all other property (which includes debt instruments that *are* traded on an established securities market) is fair market value.

Under the special rule, the value of a debt instrument not traded on an established securities market is the sum of the reasonably expected cash flows on the instrument, discounted using semiannual compounding at a rate equal to 120 percent of the applicable federal rate (AFR).

The intent behind the special valuation rule is uncertain. The legislative history of the FASIT provisions indicates the rule was meant to be a simple and mechanical formula that, by its nature, would not produce accurate results in every case. Specifically, the legislative history states that the value of an asset is determined by the special valuation rule even if a different value would be determined by applying a willing buyer/willing seller standard. See H.R. Rept.104–737, 104th Cong. 2d Sess., 327 (1996). At the same time, by applying a fair market value standard to all other assets (including market-traded debt), Congress showed a clear preference for using actual fair market value whenever it can be determined with reasonable accuracy.

Several commentators made suggestions on how to interpret the legislative intent behind the special valuation rule. In general, the commentators were concerned that implementing the rule without modification would in many cases generate tax gains far in excess of economic gains. Because the commentators viewed this overvaluation as a substantial impediment to the use of FASITs, they asked that the proposed regulations narrow as much as possible the debt instruments subject to the special valuation rule.

The proposed regulations attempt to reconcile the legislative intent and the commentators' concerns in a consistent and principled manner. The policy justification for the special valuation rule is strongest where it is difficult, if not impossible, to separate the value of a debt instrument from the value of the Owner's business relationship with the debtor. For example, the value of credit card receivables may be inferred if the receivables are placed in trust and used to create new debt instruments that are sold to the public at a disclosed price. In this case, however, the implied price necessarily includes both the value of the receivables and the value of the transferor's implicit or explicit promise to replace the receivables as they mature. Because there is no objective, easily administrable method for allocating the portion of the price allocable to the receivable (as opposed to the portion allocable to the transferor's ongoing business), the special valuation rule seems appropriate in this context.

By contrast, the policy justification for the special valuation rule is weakest in cases where the fair market value of the debt instrument can be easily established. For example, if a FASIT purchases a pool of non-market-traded securities for cash in a transaction where the FASIT maintains no continuing relationship with the seller, there appears to be no reason to distrust the value as determined by an actual arm's length bargaining.

Consistent with this understanding of the purpose behind the special valuation rule, the proposed regulations take a broad view of what constitutes an established securities market. In addition, the regulations clearly delineate whether property is subject to the special rule and provide a number of exceptions from the special rule.

b. *Traded on an established securities market.* The proposed regulations define the term *traded on an established securities market* by reference to § 1.1273–2(f)(2) through (4) of the OID

regulations. The proposed regulations also give the Commissioner the power to determine that debt instruments not meeting the standards of the OID regulations are nevertheless traded on an established securities market. Under the cross-reference to the OID regulations, debt is considered traded on an established securities market if (1) it is listed on certain specified securities exchanges or on certain interdealer quotation systems, (2) it is traded on a board of trade or interbank market, or (3) it appears on a quotation medium that provides a reasonable basis to determine fair market value by disseminating either recent price quotations or actual prices of recent sales transactions.

The proposed regulations do not cross-reference § 1.1273–2(f)(5) of the OID regulations. Consequently, debt is not considered *traded on an established securities market* if it is merely readily quotable within the meaning of § 1.1273–2(f)(5). The IRS and Treasury do not expect this omission to have a significant impact because, under a special exception (the spot purchase rule, discussed below) the proposed regulations value non-publicly traded debt instruments at their cost if a FASIT acquires them in (or soon after) an arm's length cash purchase.

According to one commentator, bank loans and private placement loans, which are typically made to small and medium sized businesses, are readily quotable within the meaning of § 1.1273–5(f)(5) but would not otherwise be considered as traded on an established securities market. The commentator stated there would be commercial interest in securitizing these loans through FASITs but for application of the special valuation rule. Although the proposed regulations do not adopt the readily quotable standard, the IRS and Treasury believe bank and private placement loans will be securitized in transactions qualifying for the spot purchase exception. Nevertheless, comments are requested on whether the readily quotable standard is still necessary.

c. *Exceptions for debt not traded on an established securities market.* The proposed regulations except from the special valuation rule certain beneficial and stripped interests. Under this exception, a certificate representing beneficial ownership of debt instruments constitutes beneficial ownership of debt instruments traded on an established securities market if either the certificate or all of the underlying debt instruments are traded on an established securities market. Similarly, a stripped bond or stripped coupon represents debt traded on an established securities market, if either the strip or the underlying debt instrument is traded on an established securities market. Because fair market value is easily determined in these circumstances, there appears to be little reason to apply the special valuation rule.

Finally, the proposed regulations provide an exception for certain debt instruments that are contemporaneously purchased and transferred to the FASIT (the spot purchase rule). Under this provision, the value of a debt instrument is its cost to the Owner if four conditions are met: (1) the debt instrument is purchased from an unrelated person in an arm's length transaction, (2) the debt instrument is acquired for cash, (3) the price of the debt instrument is fixed no more than 15 days before the date of the purchase, and (4) the debt instrument is transferred to the FASIT no more than 15 days after the date of the purchase.

d. *Debt instruments not traded on an established securities market.* As discussed above, the special valuation rule values a debt instrument by discounting the reasonably expected cash flows on the instrument. The proposed regulations require that the determination of reasonably expected cash flows be commercially reasonable. The proposed regulations also permit reasonable assumptions concerning credit risk, early repayments, and loan servicing costs to be taken into account. Additional rules discourage the use of assumptions known to be inaccurate.

One safeguard is a consistency test. Even though a debt instrument may not be traded on an established securities market, a person securitizing the debt instrument may make certain public representations about the debt instrument, such as in a prospectus or an offering memorandum. The consistency test prevents the use of one set of assumptions for tax purposes and the use of another set for different purposes. Specifically, all assumptions used in determining reasonably expected cash flows (for purposes of the FASIT valuation rule) must be no less favorable than the assumptions underlying the representations made to any of the following groups in the prescribed order: investors, rating agencies, or governmental agencies. For example, if one default rate is assumed to value debt instruments in a prospectus, a higher default rate cannot be assumed to value the debt instruments for purposes of the gain recognition provisions. Even if no representations concerning value are made to investors, rating agencies, or governmental agencies, the assumptions made for purposes of the gain recognition provisions must still be consistent with any applicable industry customs and standards. To encourage adherence to the consistency test, the Commissioner may determine reasonably expected cash flows without making any adjustment if the assumption made with respect to that adjustment (for example, assumed credit risks) fails the consistency test or is otherwise unreasonable.

In addition to the consistency test, the proposed regulations place a ceiling on projected loan servicing costs. Specifically, the amount of loan servicing costs projected may not exceed the lesser of (1) the amount the FASIT agrees to pay the Owner (or a related person) for servicing all, or a portion, of the loans held by the FASIT, or (2) the amount a third party would reasonably pay for the servicing of identical loans.

e. *Special valuation rule for guarantees.* Because a guarantee usually is not a debt instrument, any gain recognized on transferring a guarantee to a FASIT would be determined using the guarantee's fair market value absent a special rule. Nevertheless, if a guarantee relates solely to non-traded debt instruments, the proposed regulations allow taxpayers to value the guarantee and the debt instruments together. Under this rule, the reasonably expected payments on the guarantee are treated as part of the reasonably expected payments on the debt instruments to which the guarantee relates.

4. Property Held Outside a FASIT Supporting FASIT Regular Interests

An Owner (or a person related to the Owner) must recognize gain on any property the Owner or related person holds outside the FASIT that supports the regular interests. In addition, property held by the Owner or related person that supports regular interests is treated as held by the FASIT for all purposes of the FASIT provisions. By treating support property as transferred to and held by a FASIT, the support rules discourage taxpayers from trying to avoid the gain-on-transfer rules and ensure that FASIT income includes the income from all FASIT property.

Commentators asked for a clear and narrow definition of support property. They suggested limiting the support rule to situations in which the arrangement with the regular interest holders indicates that assets held outside the FASIT would have been transferred to the FASIT but for the gain recognition rules. Under this view, support property

includes: (1) subordinated interests in debt instruments contributed to the FASIT, (2) property securing an Owner's guarantee, and (3) contribution agreements that allow the FASIT to purchase a debt instrument for an amount significantly below its fair market value. Several commentators argued that unless a narrow view of support is adopted, the support rule threatens to subject to the gain recognition rule all property held by an Owner whenever the Owner guarantees a regular interest or has any kind of continuing relationship with the FASIT.

Consistent with the comments received, the proposed regulations narrowly define support property. Under the proposed regulations, property generally is *support property* if the Owner (or a related person): (1) Identifies the property as providing security for a regular interest, (2) sets aside the property for transfer to the FASIT under a contribution agreement, or (3) holds an interest in the property that is subordinate to the FASIT's interest in the property. This last situation can arise, for example, if the Owner holds the junior interests in a pool of debt instruments while the FASIT holds the senior interests.

5. Deferral of Gain Recognition

Although gain must ordinarily be recognized as soon as property is transferred, the FASIT provisions authorize regulations under which gain on transferred property is deferred until the transferred property supports regular interests. Several commentators specifically requested a gain deferral system and one explained in detail how a gain deferral system could be applied to a constantly revolving pool of assets.

The proposed regulations do not provide a general gain deferral system. After carefully considering the issues involved, the IRS and Treasury have determined that gain deferral rules must build on rules for accounting for pooled debt instruments. The IRS and Treasury anticipate providing rules for pooled debt instrument in future guidance, and at that time expect to revisit the FASIT gain deferral rules.

Although the proposed regulations do not provide rules for gain deferral generally, rules permitting gain deferral for pre-effective date FASITs have been developed consistent with the requirements of the Act. The IRS and the Treasury request comments on whether and how the gain deferral system for pre-effective date FASITs may be modified to accommodate a general gain deferral system.

Ownership Interests and Consolidated Groups

By statute, to qualify as a FASIT, an arrangement must have one (and only one) ownership interest, and that ownership interest must be held by one (and only one) eligible corporation. Congress, however, anticipated that Treasury would "issue guidance on how the ownership rule would apply to cases in which the entity that owns the FASIT joins in the filing of a consolidated return with other members of the group that wish to hold an ownership interest in the FASIT." See H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 329 (1996).

Commentators urged the IRS and Treasury to issue guidance that would change the statutory rule and permit members of a consolidated group to jointly hold a FASIT ownership interest. In studying the issue, however, the IRS and Treasury became concerned about how such guidance would continue to satisfy those general principles of the consolidated return regulations that preclude the shifting of stock basis, income, or loss. The IRS and Treasury considered different models that would permit members of a consolidated group to jointly hold (or enjoy the benefits of jointly holding) a FASIT ownership interest, but none of these were found to adequately address the government's concerns without adding administrative complexity for both the IRS and taxpayers. Moreover, the IRS and Treasury are not convinced the level of potential attribute shifting should be disregarded or addressed through an anti-abuse rule or would be so minor that disregarding it would be appropriate. Therefore, the proposed regulations do not provide rules permitting members of a consolidated group to jointly hold ownership interests in a FASIT. The IRS and Treasury invite the submission of additional comments that would address these concerns.

Transfers of Ownership Interests

The proposed regulations ignore the transfer of an ownership interest if the transfer is accomplished to impede the assessment or collection of tax. A transfer is accomplished to impede the assessment or collection of tax if the transferor knows, or should know, that the transferee would be unwilling or unable to pay some or all of the tax arising from holding the ownership interest. A safe harbor, incorporated through a cross-reference to comparable rules regarding transfers of REMIC residual interests, is available to Owner-transferors who conduct a reasonable investigation of the transferee's financial condition. As explained under the caption PROPOSED AMENDMENT TO REMIC REGULATIONS in this preamble, the REMIC safe harbor incorporated by the FASIT rules has been modified.

Rules Applicable to Regular Interest Holders

The FASIT provisions treat a regular interest as a debt instrument for all purposes of the Code and require the holder to account for gross income with respect to the regular interest under an accrual method.

Few comments were made with respect to FASIT regular interests. One commentator suggested a rule that would prevent the holder of a debt instrument from recognizing a loss on, or changing the tax consequences of, the debt instrument by transferring it to a FASIT in exchange for an identical or similar FASIT regular interest. No such rule is adopted by the proposed regulations because the IRS and Treasury believe this type of transaction is adequately addressed by the wash sales rules of the Code and the FASIT anti-abuse rule described later. Similarly, the proposed regulations have adopted no special rules concerning the consequences of modifying regular interests, because the IRS and Treasury believe these issues are adequately addressed under existing principles of Federal tax law.

Special Rules

Anti-Abuse Rule

The proposed regulations contain an anti-abuse rule patterned after the anti-abuse rule in the partnership regulations issued under subchapter K. The FASIT anti-abuse rule evaluates transactions against the underlying purpose of the FASIT provisions, which is to promote the spreading of credit risk on debt instruments by facilitating the securitization of debt instruments. If a FASIT is formed or used to achieve a tax result inconsistent with this purpose, the Commissioner may take remedial action, including disregarding the FASIT election, reallocating items of income, deductions and credits, recharacterizing regular interests, and redesignating the holder of the ownership interest. Whether a FASIT is formed or used to achieve a tax result that is inconsistent with the FASIT provisions is a question of fact. In addition to applying the specific anti-abuse rule included in these proposed regulations, the IRS and Treasury will also continue to apply other statutory, administrative, and judicial anti-abuse provisions, such as the judicial

doctrines of economic substance and substance over form, to transactions and structures involving FASITs. For example, see the principles of Notice 98–5 (1998–3 I.R.B. 49), regarding foreign tax credits.

Although regular interests in a FASIT may be held in a tiered FASIT structure and treated by each FASIT as permitted assets, the tiering of FASITs may not be used for double or multiple counting of the FASIT gross income or gross assets for other purposes of the Code in a manner that would be inconsistent with the intent of the FASIT provisions. In this regard, the IRS and Treasury consider the recognition of interest expense paid and the corresponding interest income received by the same Owner to be inconsistent with the intent of the provisions. Accordingly, such Owner-created attributes must be disregarded because a taxpayer may not enter into a transaction with itself. For example, the gross income and gross assets from the tiering of FASITs may not be taken into account more than once for purposes of testing whether an Owner is an 80/20 company under section 861, or for purposes of determining the relative domestic and foreign source gross assets of the Owner or the Owner's affiliated group in applying the interest expense allocation rules proposed here under section 864(e).

International Provisions

Prohibition of Foreign FASITS and Segregated Pools Subject to Foreign Tax

It appears that taxpayers may attempt to exploit differences in the characterization of a FASIT or the interests in a FASIT under U.S. law and relevant foreign law to produce inappropriate tax avoidance (including by producing a non-economic allocation of foreign taxes to the holder of the FASIT ownership interest). To minimize this possibility, the proposed regulations provide that a foreign entity (including but not limited to a foreign corporation or a foreign partnership) may not be a qualified arrangement. In addition, a qualified arrangement may not be a domestic entity or a segregated pool of identified assets any of the income of which is subject to tax on a net basis by a foreign country. The IRS and Treasury intend that the imposition of foreign tax on a net basis with respect to the assets and liabilities of a FASIT will disqualify a FASIT election without regard to whether the segregated pool of assets is actually held through a U.S. or foreign office or fixed place of business. In addition, a preexisting qualified FASIT may cease to be a FASIT prospectively by being subjected to foreign net taxation for the first time in a later year as a result of newly conducted foreign activities. It is not necessary that actual foreign tax be imposed for an arrangement to be considered subject to foreign net taxation.

The IRS and Treasury request comments regarding whether there may be circumstances in which legitimate (non-tax) business reasons justify allowing a FASIT election to be made by a foreign entity, or an entity the income of which is subject to net foreign taxation, or on behalf of a segregated pool which may be subject to net foreign taxation.

Prohibition on Foreign FASITs and Segregated Pools Subject to Foreign Tax

The IRS and Treasury are also concerned that taxpayers may attempt to use FASITs to produce non-economic allocations of foreign withholding taxes to the holder of the FASIT ownership interest. The IRS and Treasury believe that such transactions may be facilitated by the ease with which an Owner can acquire publicly-traded debt that is subject to foreign withholding tax. In addition, prohibiting a FASIT from holding publicly-traded debt subject to a foreign withholding tax should not unduly interfere with legitimate securitizations of debt held by an Owner. Accordingly, the proposed regulations provide that the definition of permitted debt instruments does not include debt instruments traded on an established securities market if such debt instruments are subject to foreign withholding tax. The IRS and Treasury request comments concerning whether the scope of this rule is adequate to address potentially abusive transactions and whether legitimate (non-tax) business reasons may justify the use of a FASIT to hold foreign debt that is traded on an established securities market and is subject to a foreign withholding tax.

Avoidance of U.S. Withholding Tax

The IRS and Treasury are also concerned that FASITs may be used by foreign resident taxpayers to avoid U.S. withholding taxes that would otherwise be imposed on direct cross-border financing to a foreign person's U.S. subsidiary. In particular, the IRS and Treasury are aware that foreign taxpayers may attempt to use FASITs to convert interest that would be disqualified from the portfolio interest exemption under sections 871(h)(3), 881(c)(3)(B), and 881(c)(3)(C) (concerning interest paid to a 10 percent shareholder and interest paid to a controlled foreign corporation from a related person) into interest that qualifies as portfolio interest. To prevent such avoidance, the proposed regulations provide that interest paid or accrued to a foreign holder of a FASIT regular interest will not qualify as portfolio interest under sections 871(h)(3) and 881(c)(3) to the extent that the FASIT receives or accrues interest from an obligor who is a U.S. resident taxpayer (the related obligor) if (1) the foreign holder is a 10 percent shareholder (within the meaning of Section 871(h)(3)) of the related obligor or (2) the foreign holder is a controlled foreign corporation and the related obligor is a *related person* (within the meaning of section 864(d)(4)) with respect to the foreign holder. For these purposes, the related obligor is defined as a *conduit debtor* who is treated as paying interest directly to the 10 percent shareholder or the controlled foreign corporation for purposes of sections 871, 881, 1441 and 1442. This rule characterizes all interest of the foreign regular interest holder as non-portfolio interest if the FASIT receives or accrues an equal or greater amount of interest from the related obligor.

Further, the IRS and Treasury request comments concerning whether FASIT regular interests, REMIC regular interests, and pass through certificates should be treated in a consistent manner for purposes of applying U.S. withholding tax rules.

The IRS and Treasury intend to issue regulations that will provide that the FASIT and its Owner are withholding agents in respect of payments made to foreign regular interest holders.

The IRS and Treasury solicit comments with respect to circumstances in which the FASIT and its Owner may be unaware of a possible relationship between foreign regular interest holders and the related obligors of the debt instruments held by the FASIT or other circumstances under which it would be inappropriate to treat payments to a regular interest holder as payments directly from a conduit debtor. It is anticipated that these regulations will provide that the FASIT and its Owner will not be responsible for withholding amounts paid to the foreign regular interest holders in the above circumstances unless the FASIT or its Owner knows, or has reason to know, that the foreign regular interest holder is a 10 percent shareholder of the related obligor or is a controlled foreign corporation considered to be receiving interest from a related person. It is expected that these regulations will further provide that the FASIT and its Owner shall be presumed to know that

these circumstances exist if the foreign regular interest holder owns 10 percent or more of the total value of the FASIT's regular interests and the debt of the related obligor accounts for 10 percent or more of the total value of the FASIT's assets.

Earnings Stripping and Original Issue Discount

The IRS and Treasury are also aware that regular interests in FASITs may be used by foreign residents to avoid other consequences that might apply to cross-border related-party payments. The IRS and Treasury are concerned that taxpayers may attempt to use FASITs to avoid the deferrals on deductibility imposed by sections 163(e)(3) on OID owing to related foreign persons and 163(j) on net interest expense that is otherwise treated as disqualified under the earnings stripping rules.

Similar to the rules adopted for portfolio indebtedness purposes, the proposed regulations treat a U.S. resident taxpayer who is an obligor to a FASIT as a conduit debtor to the extent a related person (within the meaning of section 267(b) or 707(b)(1)) who would not be subject to tax on a direct payment by the U.S. obligor receives interest with respect to a regular interest in the FASIT. In such circumstances, the earnings stripping provisions will apply to treat interest paid by a U.S. corporation or a U.S. trade or business of a foreign corporation on an obligation held by a FASIT as disqualified interest for purposes of section 163(j). Similarly, the conduit debtor rule also operates to treat OID accrued to a FASIT by a domestic party as deferred to the extent a related foreign person (as defined in section 163(e)(3)(B)) receives interest with respect to a regular interest of the FASIT. These rules apply to payments and accruals made during the same period the regular interest in the FASIT is held by the 10 percent shareholder or foreign related party.

No Correlative Adjustments to FASIT

The FASIT and its Owner are not entitled to any correlative adjustments for amounts that are treated as directly paid by a conduit debtor and treated as directly received by or accrued to a related party. Accordingly, all interest paid or accrued by the conduit debtor to the FASIT must be taken into account by the Owner in determining its own taxable income. This treatment is consistent with Treasury's general approach, already adopted in conduit financing regulations, to preventing withholding tax avoidance. TD 8611, 1995–2 C.B. 286, 293.

Interest Expense Allocation

For purposes of applying the interest expense allocation rules to the Owner under section 864(e) and the regulations thereunder, new proposed regulations provide that all interest expense from all FASITs that is treated as incurred by any Owner or by any other Owner that is a member of the same affiliated group of which the Owner is a member is directly allocated solely to all income from all FASITs of such Owners. The directly allocated interest expense is treated as directly related to all activities and assets of all the Owner's FASITs and is apportioned between domestic and foreign source FASIT gross income by applying the general asset method to the FASIT's assets. The proposed interest allocation rules also extend the existing asset adjustment rules under the asset method in § 1.861–9T(g), which reduce assets to reflect the principal amount of indebtedness outstanding relating to the interest which is directly allocated. The rules of § 1.861–10T(d)(2) are also made applicable. In addition, the new proposed interest allocation rules are the exclusive method for the direct allocation of FASIT interest expense. The IRS and Treasury are not aware of any situations in which the direct allocation rules of the existing temporary regulations would apply to any items of FASIT income and interest expense. Comments are solicited in this regard.

The rules apply to interest expense with respect to any FASIT as of that FASIT's startup day and throughout the entire period that the arrangement continues to qualify as a FASIT. The rules provide the Commissioner with discretion to continue to directly allocate interest expense with respect to a ceased FASIT to FASIT income if the Commissioner determines that a principle purpose for terminating the FASIT was to affect the interest allocation.

The IRS and Treasury believe that directly allocating FASIT interest expense solely to FASIT gross income is an administrable and appropriate way to limit distortions (favorable or unfavorable as the case may be) to a taxpayer's overall allocation of interest expense for foreign tax credit purposes. It is recognized, however, that the new proposed direct allocation rules may enable certain interest expense allocation planning that may create distortions that would not occur under existing interest allocation rules. To address these concerns, the IRS and Treasury are considering whether to adopt rules in final regulations that limit the extent to which the direct allocation rules may apply, including rules regarding the amount of variance between the direct allocation and combined asset allocation rules that is appropriate. Comments are solicited on this issue.

Pre-Effective Date FASITs

Section 1691(e) of the Small Business Job Protection Act of 1996 (the Act) provides special transition rules for securitization entities in existence on August 31, 1997. Under these rules, the Owner of a pre-effective date FASIT may defer the recognition of FASIT gain on assets attributable to pre-FASIT interests. For purposes of this rule, a *pre-effective date FASIT* is a FASIT the underlying arrangement of which was in existence on August 31, 1997. A *pre-FASIT interest* is an interest in the underlying arrangement that was outstanding on the FASIT startup date and that is considered debt under general tax principles.

The proposed regulations provide a safe-harbor method of accounting that allows the separation of FASIT gain attributable to pre-FASIT interests, and other FASIT gain. Basically, the safe-harbor method has three steps. Under the first step, the Owner groups the assets of the FASIT into pools. To ensure that each pool can be marked to market using a valuation methodology appropriate for its constituent assets, the proposed regulations provide that no pool may contain assets of more than one of the following three types: (1) assets that are valued under the special valuation rule and that have FASIT gain on the first day they are held by the FASIT, (2) assets that are valued under general fair market value principles and that have FASIT gain on the first day they are held by the FASIT, and (3) assets that do not have FASIT gain on the first day they are held by the FASIT.

Under the second step, the Owner periodically computes for each pool the difference between the income determined under a mark-to-market system (using the appropriate FASIT valuation methodology) and the income determined under an accrual system. This difference is referred to as FASIT gain (or loss) and is essentially a measure of the gain (or loss) from the pool that is attributable to the operation of the FASIT gain recognition rules. These rules require gain to be determined at the pool level when assets are contributed to a FASIT, and implicitly allow this gain to be reversed out (as deductions in the nature of premium offset) as the assets in the pool mature. In periods in which net contributions are made to the pool, the

calculation generally will produce FASIT gain. In periods in which the pool decreases in size or duration, the calculation generally will produce FASIT loss. This FASIT loss is, in effect, a recapture of previously determined FASIT gain. Over the entire life of a pool, the aggregate FASIT gain (or loss) will be zero; the FASIT valuation rules do not create lifetime net income.

Under the third step, the Owner determines the proper amount of FASIT gain (or loss) to recognize during the current period. To determine this amount, the Owner first calculates the total amount of FASIT gain as of the last day of the current period. The Owner then reduces this amount to exclude the percentage of the FASIT gain that is attributable to pre-FASIT interests outstanding on the last day of the period. This reduced amount represents the cumulative amount of FASIT gain the Owner should recognize by the end of the current period. Finally, to adjust for amounts recognized in previous periods, the Owner subtracts from this amount the cumulative amount of FASIT gain that the Owner had recognized at the end of the previous period. The difference is the amount of FASIT gain (or loss) to be recognized in the current period.

Owners of pre-effective date FASITs that presently use a gain deferral methodology that differs from the safe harbor method described above may adopt the safe-harbor method. The IRS and Treasury request comments on whether guidance is needed on how this change of method may be accomplished.

Proposed Amendment to REMIC Regulations

Final regulations governing REMICs, issued in 1992, contain rules governing the transfer of noneconomic REMIC residual interests. In general, a transfer of a noneconomic residual interest is disregarded for all tax purposes if a significant purpose of the transfer is to enable the transferor to impede the assessment or collection of tax. A purpose to impede the assessment or collection of tax (a wrongful purpose) exists if the transferor, at the time of the transfer, either knew or should have known that the transferee would be unwilling or unable to pay taxes due on its share of the REMIC's taxable income.

Under a safe harbor, the transferor of a REMIC residual interest is presumed not to have a wrongful purpose if two requirements are satisfied. First, the transferor must conduct a reasonable investigation of the transferee's financial condition. Second, the transferor must secure a representation from the transferee to the effect that the transferee understands the tax obligations associated with holding a residual interest and intends to pay those taxes.

The IRS and Treasury are concerned that some transferors of residual interests claim they satisfy the safe harbor even in situations where the economics of the transfer clearly indicate the transferee is unwilling or unable to pay the tax associated with holding the interest. The proposed regulations, therefore, would clarify the safe harbor. The proposal explains that the safe harbor is unavailable unless the present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of: (1) the present value of any consideration given to the transferee to acquire the interest; (2) the present value of the expected future distributions on the interest; and (3) the present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses. No inference is intended regarding whether any existing transactions satisfy the substantive requirements of this safe harbor before the clarification made by this amendment.

Proposed Effective Date

In general, the proposed regulations including the proposed amendments to the interest expense allocation regulations are proposed to apply on the date final regulations are filed with the **Federal Register**. The portion of the proposed regulations containing the anti-abuse rule and the portion of the proposed regulations allowing the deferral of gain on assets held by a pre-effective date FASIT are proposed to apply on February 4, 2000. The proposed amendment to the REMIC regulations is proposed to apply to all transfers occurring after the date final regulations concerning the amendment are published in the **Federal Register**.

Special Analyses

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that it is unlikely that a substantial number of small entities will hold FASIT ownership interests. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 15, 2000, beginning at 10 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by April 24, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and record keeping requirements.

26 CFR Part 602

Reporting and record keeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for 1.861–10(e) and adding entries in numerical order to read as follows:

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

Section 1.860H–1 also issued under 26 U.S.C. 860L(h).

Section 1.860H–2 also issued under 26 U.S.C. 860L(h).

Section 1.860H–3 also issued under 26 U.S.C. 860L(h) and 860L(f).

Section 1.860H–4 also issued under 26 U.S.C. 860L(h).

Section 1.860H–5 also issued under 26 U.S.C. 860L(h) and 7701(l).

Section 1.860I–1 also issued under 26 U.S.C. 860L(h) and 860I(c).

Section 1.860I–2 also issued under 26 U.S.C. 860L(h).

Section 1.860J–1 also issued under 26 U.S.C. 860L(h).

Section 1.860K–1 also issued under 26 U.S.C. 860L(h).

Section 1.860L–1 also issued under 26 U.S.C. 860L(h).

Section 1.860L–2 also issued under 26 U.S.C. 860L(h).

Section 1.860L–3 also issued under 26 U.S.C. 860L(h).

Section 1.860L–4 also issued under 26 U.S.C. 860L(h). * * *

Section 1.861–9 also issued under 26 U.S.C. 864(e)(7).

Section 1.861–10 also issued under 26 U.S.C 863(a), 26 U.S.C. 864(e)(7), 26 U.S.C. 865(i), and 26 U.S.C. 7701(f). * * *

Par. 2. Section 1.860E–1 is amended by:

1. Revising paragraph (c)(4).

2. Adding paragraphs (c)(5) and (c)(6).

The addition and revision read as follows:

§ 1.860E–1 Treatment of taxable income of a residual interest holder in excess of daily accruals.

* * * * *

(c) * * *

(4) *Safe harbor for establishing lack of improper knowledge.* A transferor is presumed not to have improper knowledge if—

(i) The transferor conducted, at the time of the transfer, a reasonable investigation of the financial condition of the transferee and, as a result of the investigation, the transferor found that the transferee had historically paid its debts as they came due and found no significant evidence to indicate that the transferee will not continue to pay its debts as they come due in the future;

(ii) The transferee represents to the transferor that it understands that, as the holder of the noneconomic residual interest, the transferee may incur tax liabilities in excess of any cash flows generated by the interest and that the transferee intends to pay taxes associated with holding residual interest as they become due; and

(iii) The present value of the anticipated tax liabilities associated with holding the residual interest does not exceed the sum of—

(A) The present value of any consideration given to the transferee to acquire the interest;

(B) The present value of the expected future distributions on the interest; and

(C) The present value of the anticipated tax savings associated with holding the interest as the REMIC generates losses.

(5) *Computational assumptions.* The following rules apply for purposes of paragraph (c)(4)(iii) of this section:

(i) The transferee is assumed to pay tax at a rate equal to the highest rate of tax specified in section 11(b)(1); and

(ii) Present values are computed using a discount rate equal to the applicable Federal rate prescribed by section 1274(d) compounded semiannually (a lower discount rate may be used if the transferee can demonstrate that it regularly borrows, in the course of its trade or business, substantial funds at such lower rate from unrelated third parties).

(6) *Effective date.* Paragraphs (c)(4) and (5) of this section are applicable on February 4, 2000.

Par. 3. Sections 1.860H–0 through 1.860L–4 are added to read as follows:

§ 1.860H–0 Table of contents.

This section lists captions that appear in §§ 1.860H–1 through 1.860L–4.

§ 1.860H–1 FASIT defined, FASIT election, other definitions.

(a) *FASIT defined*—(1) A *FASIT* is a qualified arrangement (as defined in paragraph (a)(2) of this section) that meets the requirements of section 860L(a)(1) and the FASIT regulations (as defined in paragraph (c) of this section). A qualified arrangement fails to meet the requirements of section 860L(a)(1) unless it has one and only one ownership interest and that ownership interest is held by one and only one eligible corporation (as defined in section 860L(a)(2)).

(2) Except as provided in paragraph (a)(3) of this section, a qualified arrangement is an arrangement that is either—

(i) An entity (other than a regulated investment company as defined in section 851(a)); or

(ii) A segregated pool of assets if—

(A) The initial assets of the pool are clearly identified, such as through an indenture; and

(B) Changes in the assets of the pool are clearly identified, such as through instruments of conveyance or release.

(3) Notwithstanding paragraph (a)(2) of this section, a qualified arrangement does not include—

(i) An entity created or organized under the law of a foreign country or a possession of the United States;

(ii) An entity any of the income of which is or ever has been subject to net tax by a foreign country or a possession of the United States; or

(iii) A segregated pool of assets any of the income of which at any time is subject to net tax by a foreign country or a possession of the United States.

(b) *FASIT election*—(1) *Person that makes the election.* For a qualified arrangement to be a FASIT an eligible corporation (as defined in section 860L(a)(2)) must make the election required under section 860L(a)(1)(A).

(i) If the qualified arrangement is an entity described in paragraph (a)(2)(i) of this section, the eligible corporation making the election must hold one or more interests in the entity, and one of those interests must be the interest designated as the FASIT's ownership interest.

(ii) If the qualified arrangement is a segregated pool of assets described in paragraph (a)(2)(ii) of this section, the eligible corporation making the election must be the first taxpayer to be treated as the Owner of the resulting FASIT.

(2) *Form of election.* Unless the Commissioner prescribes otherwise, a FASIT election is made by means of a statement attached to the Federal income tax return of the eligible corporation making the election.

(3) *Time for filing election.* The statement referred to in paragraph (b)(2) of this section must be attached to a timely filed (including extensions) original Federal income tax return for the eligible corporation's taxable year in which the FASIT's startup day occurs. An election may not be made on an amended return.

(4) *Contents of election.* The statement referred to in paragraph (b)(2) of this section must include—

(i) For other than a segregated pool of assets, the name, address, and taxpayer identification number of the arrangement (if one was issued prior to the making of the election);

(ii) For a segregated pool of assets, the following information—

(A) The name, address, and taxpayer identification number of the person or persons holding legal title to the pool of assets;

(B) The name, address, and taxpayer identification number of the person or persons that, immediately before the startup day, are considered to own the pool for Federal income tax purposes; and

(C) Information describing the origin of the pool (including the caption and date of execution of any instruments of indenture or similar documents that govern the pool);

(iii) The startup day; and

(iv) The name and title of all persons signing the statement.

(5) *Required signatures.* The statement referred to in paragraph (b)(2) of this section must be signed by the authorized person, described in this paragraph (b)(5).

(i) For other than a segregated pool of assets, the authorized person is any person authorized to sign the qualified arrangement's Federal income tax return in the absence of a FASIT election. For example, if a qualified arrangement is a corporation or trust under applicable state law, an authorized person is a corporate officer or trustee, respectively.

(ii) For a segregated pool of assets, the authorized person is each person who, for Federal income tax purposes, owns the assets of the pool immediately before the earlier of the date on which—

(A) An outstanding interest in the pool is designated as a regular or ownership interest in a FASIT; or

(B) The pool issues an interest designated at the time of issuance as a regular or ownership interest in a FASIT.

(6) *Special rule regarding startup day.* The startup day must be a day on which the eligible corporation making the election is described in paragraph (b)(1)(i) or (ii) of this section.

(c) *General definitions.* For purposes of the regulations issued under part V of subchapter M of chapter 1 of subtitle A of the Internal Revenue Code (the FASIT regulations)—

(1) *Owner* means the eligible corporation that holds the interest described in section 860L(b)(2);

(2) *Transfer* includes a sale, contribution, endorsement, or other conveyance of a legal or beneficial interest in property.

§ 1.860H–2 Assets permitted to be held by a FASIT.

(a) *Substantially all.* For purposes of section 860L(a)(1)(D), substantially all of the assets held by a FASIT consist of

permitted assets if the total adjusted bases of the permitted assets is more than 99 percent of the total adjusted bases of all the assets held by the FASIT, including those assets deemed to be held under section 860I(b)(2).

(b) *Permitted debt instrument*—(1) *In general.* Except as otherwise provided, a debt instrument is described in section 860L(c)(1)(B) only if it is a permitted debt instrument. For purposes of the FASIT regulations, a permitted debt instrument is—

(i) A fixed rate debt instrument, including a debt instrument having more than one payment schedule for which a single yield can be determined under § 1.1272–1(c) or (d);

(ii) A variable rate debt instrument within the meaning of § 1.1275–5 if the debt instrument provides for interest at a qualified floating rate within the meaning of § 1.1275–5(b);

(iii) A REMIC regular interest;

(iv) A FASIT regular interest (including a FASIT regular interest issued by anotherFASIT in which the Owner (or a related person) holds an ownership interest);

(v) An inflation-indexed debt instrument as defined in § 1.1275–7;

(vi) Any receivable generated through an extension of credit under a revolving credit agreement (such as a credit card account);

(vii) A stripped bond or stripped coupon (as defined in section 1286(e)(2) and (3)), if the debt instrument from which the stripped bond or stripped coupon is created is described in paragraphs (b)(1)(i) through (vi) of this section; and

(viii) A certificate of trust representing a beneficial ownership interest in a debt instrument described in paragraphs (b)(1)(i) through (vii) of this section.

(2) *Special rules for short-term debt instruments issued by the Owner or related person.* Notwithstanding section 860L(c)(2) and paragraph (b)(3)(iii) of this section, a debt instrument issued by the Owner (or a related person) is a permitted debt instrument if it—

(i) Is described in paragraph (b)(1)(i) or (ii) of this section;

(ii) Has an original stated maturity of 270 days or less;

(iii) Is rated at least investment quality by a nationally recognized statistical rating organization that is not a related person of the issuer; and (

iv) Is acquired to temporarily invest cash awaiting either reinvestment in permitted assets not described in this paragraph (b)(2), or distribution to the Owner or holders of one or more FASIT regular interests.

(3) *Exceptions.* Notwithstanding paragraph (b)(1) of this section, the following debt instruments are not permitted assets.

(i) *Equity-linked debt instrument.* A debt instrument is not a permitted asset if the debt instrument contains a provision that permits the instrument to be converted into, or exchanged for, any legal or beneficial ownership interest in any asset other than a permitted debt instrument (such as a debt instrument that is exchangeable for an interest in a partnership). Similarly, a debt instrument is not a permitted asset if the debt instrument contains a provision under which one or more payments on the instrument are determined by reference to, or are contingent upon, the value of any asset other than a permitted debt instrument (such as a debt instrument containing a provision under which one or more payments on the instrument are determined by reference to, or are contingent upon, the value of stock).

(ii) *Defaulted debt instrument.* A debt instrument is not a permitted asset if, on the date the debt instrument is acquired by the FASIT, the debt instrument is in default due to the debtor's failure to have timely made one or more of the payments owed on the debt instrument and the Owner has no reasonable expectation that all delinquent payments on the debt instrument, including any interest and penalties thereon, will be fully paid on or before the date that is 90 days after the date the instrument is first held by the FASIT.

(iii) *Owner debt.* A debt instrument is not a permitted asset if the debt instrument is issued by the Owner (or a related person) and the debt instrument does not qualify as a permitted debt instrument under paragraphs (b)(1)(iv) or (2) of this section.

(iv) *Certain Owner-guaranteed debt.* A debt instrument is not a permitted asset if the debt instrument is guaranteed by the Owner (or a related person) and, based on all of the facts and circumstances existing at the time the guarantee is given, or at the time the FASIT acquires the guaranteed debt instrument the Owner (or a related person) is, in substance, the primary obligor on the debt instrument. For this purpose, a guarantee includes any promise to pay in the case of the default or imminent default of any debt instrument.

(v) *Debt instrument linked to the Owner's credit.* A debt instrument that is issued by a person other than the Owner (or a related person) is not a permitted asset if the timing or amount of payments on the instrument are determined by reference to, or are contingent on, the timing or amount of payments made on a debt instrument issued by the Owner (or a related person).

(vi) *Partial interests in non-permitted debt instruments.* A debt instrument is not a permitted asset if the debt instrument is a partial interest such a stripped bond or stripped coupon (as defined in section 1286(e)) in a debt instrument described in paragraphs (b)(3)(i) through (v) of this section.

(vii) *Certain Foreign Debt Subject to Withholding Tax.* A debt instrument is not a permitted asset if the debt instrument is traded on an established securities market (within the meaning of § 1.860I–2) and interest on the debt instrument is subject to any tax determined on a gross basis (such as a withholding tax) other than a tax which is in the nature of a prepayment of a tax imposed on a net basis.

(c) *Cash and cash equivalents.* For purposes of section 860L(c)(1)(A) and the FASIT regulations, the term *cash and cash equivalents* means—

(1) The United States dollar;

(2) A currency other than the United States dollar if the currency is received as payment on a permitted asset described in § 1.860H–2, or the currency is required by the FASIT to make a payment on a regular interest issued by the FASIT according to the terms of the regular interest;

(3) A debt instrument if it—

(i) Is described—

(A) In paragraphs (b)(1)(i), (ii), or (v) of this section, or

(B) In paragraph (b)(vii) of this section if it is created from an instrument described in paragraphs (b)(1)(i), (ii), or (v) of this section;

(ii) Has a remaining maturity of 270 days or less; and

(iii) Is rated at least investment quality by a nationally recognized statistical rating organization that is not a related person to the issuer; and

(4) Shares in a U.S.-dollar-denominated money market fund (as defined in 17 CFR 270.2a–7).

(d) *Hedges and guarantees*—(1) *In general.* Subject to the rules in paragraphs (d)(2) through (4) of this section, a hedge or guarantee contract is described in section 860L(c)(1)(D) (a *permitted hedge*) only if the hedge or guarantee contract is reasonably required to offset any differences that any risk factor may cause between the amount or timing of the receipts on assets the FASIT holds (or expects to hold) and the amount or timing of the payments on the regular interests the FASIT has issued (or expects to issue). For purposes of this paragraph (d), the risk factors are—

(i) Fluctuations in market interest rates;

(ii) Fluctuations in currency exchange rates;

(iii) The credit quality of, or default on, the FASIT's assets or debt instruments underlying the FASIT's assets; and

(iv) The receipt of payments on the FASIT's assets earlier or later than originally anticipated.

(2) *Referencing other than permitted assets.* A hedge or guarantee contract is not a permitted hedge if it references an asset other than a permitted asset or if it references an index, economic indicator, or financial average, that is not both widely disseminated and designed to correlate closely with changes in one or more of the risk factors described in paragraphs (d)(1)(i) through (iv) of this section.

(3) *Association with particular assets or regular interests.* A hedge or guarantee contract need not be associated with any of the FASIT's assets or regular interests, or any group of its assets or regular interests, if the hedge or guarantee contract offsets the differences described in paragraph (d)(1) of this section.

(4) *Creating an investment prohibited.* A hedge or guarantee contract is not a permitted hedge if at the time the hedge or guarantee is entered into, it in substance creates an investment in the FASIT.

(e) *Hedges and guarantees issued by Owner (or related person)*—(1) *Hedges.* A hedge contract issued by the Owner (or a related person) is a permitted asset only if—

(i) The contract is a permitted hedge other than a guarantee contract;

(ii) The Owner (or the related person) regularly provides, offers, or sells substantially similar contracts in the ordinary course of its trade or business;

(iii) On the date the contract is acquired by the FASIT (and on any later date that it is substantially modified) its terms are consistent with the terms that would apply in the case of an arm's length transaction between unrelated parties; and

(iv) The Owner maintains records that—

(A) Show the terms of the contract are consistent with the terms that would apply in the case of an arm's length transaction between unrelated parties; and

(B) Explain how the Owner (or related person) determined the consideration for the contract.

(2) *Guarantees.* A guarantee contract issued by the Owner (or a related person) is a permitted asset only if—

(i) The contract is a permitted hedge and satisfies paragraphs (e)(1)(iii) and (iv) of this section;

(ii) The contract is a credit enhancement contract under § 1.860G–2(c); and

(iii) Immediately after the contract is acquired by the FASIT (and on any later date that it is substantially modified), the value (determined under section 860I and § 1.860I–2) of all the FASIT's guarantee contracts issued by the Owner (and related persons) is less than 3 percent of the value (determined under section 860I and § 1.860I–2) of all the FASIT's assets.

(f) *Foreclosure property.* Property acquired in connection with the default or imminent default of a debt instrument held by a FASIT may qualify both as foreclosure property under section 860L(c)(1)(C) and as another type of permitted asset under section 860L(c)(1). If foreclosure property qualifies as another type of permitted asset, the FASIT may hold the property beyond the grace period prescribed for foreclosure property under section 860L(c)(3). In this case, immediately after the grace period ends, the taxpayer must recognize gain, if any, as if the property had been contributed by the Owner to the FASIT on that date. See § 1.860I–1(a)(1)(iii). In addition, after the close of the grace period, disposition of the property is subject to the prohibited transactions tax imposed under section 860L(e) without the benefit of the exception for foreclosure property.

(g) *Special rule for contracts or agreements in the nature of a line of credit.* For purposes of section 860L(c)(1), the term *permitted asset* includes a lender's position in a contract or agreement in the nature of a line of credit (other than a contract or agreement that is originated by the FASIT). Such a contract or agreement is not subject to the rules of section 860I(a) at the time the contract or agreement is transferred to the FASIT. Extensions of credit under the contract or agreement are subject to the rules of section 860I(a) at the time the extension is made. See section 860I(d)(2). To determine whether a contract or agreement is originated by a FASIT, see § 1.860L–1.

(h) *Contracts to acquire hedges or debt instruments.* A contract is not described in section 860L(c)(1)(E) if it is an agreement under which the Owner (or a related person) agrees to transfer permitted hedges or permitted debt instruments to a FASIT for less than —

(1) Fair market value, in the case of hedges or debt instruments traded on an established securities market (as defined in § 1.860I–2); or

(2) Ninety percent of their value, as determined under section 860I(d)(1)(A) and the FASIT regulations, in the case of debt instruments not traded on an established securities market.

§ 1.860H–3 Cessation of a FASIT.

(a) *In general.* An arrangement ceases to be a FASIT if it revokes its election with the consent of the Commissioner or if it fails to qualify as a FASIT and the Commissioner does not determine the failure to be inadvertent.

(b) *Time of cessation.* An arrangement ceases to be a FASIT at the close of the day designated by the Commissioner in the consent to revoke, or if there is no consent to revoke or determination of inadvertence, at the close of the day on which the arrangement initially fails to qualify as a FASIT.

(c) *Consequences of cessation.* Except as otherwise determined by the Commissioner, the consequences of cessation are as follows:

(1) *The FASIT and the underlying arrangement.* The arrangement that made the FASIT election (the underlying arrangement) is no longer a FASIT and cannot re-elect FASIT treatment without the Commissioner's approval. Immediately after the cessation, the arrangement's classification (for example, as a partnership or corporation) is determined under general principles of Federal income tax law. Immediately after the cessation, the arrangement holds the FASIT's assets with a fair market value basis. Any election the Owner made (other than the FASIT election), and any method of accounting the Owner adopted with respect to those assets, binds the underlying arrangement as if the underlying arrangement itself had made the election or adopted the method of accounting. If the underlying arrangement is a segregated pool of assets, the person holding legal title to the pool is responsible for complying with any tax filing or reporting requirements arising from the pool's operation.

(2) *The Owner.* (i) The Owner is treated as exchanging the assets of the FASIT for an amount equal to their value (as determined under § 1.860I–2). Gain realized on the exchange is treated as gain from a prohibited transaction and the Owner is subject to the tax imposed by 860L without exception. Loss, if any, is disallowed. The determination of gain or loss on assets for purposes of this paragraph is made on an asset-by-asset basis.

(ii) The Owner must recognize cancellation of indebtedness income in an amount equal to the adjusted issue

price of the regular interests outstanding immediately before the cessation over the fair market value of those interests immediately before the cessation. This determination is made on a regular interest by regular interest basis. The Owner cannot take any deduction for acquisition premium.

(iii) If, after the cessation, the Owner has a continuing economic interest in the assets, the characterization of this economic interest (for example, as stock or a partnership interest) is determined under general principles of Federal income tax law. If the Owner has a continuing economic interest in the assets immediately after cessation, the Owner holds the interest with a fair market value basis.

(3) *The regular interest holders.* Holders of the regular interests are treated as exchanging their regular interests for interests in the underlying arrangement. Interests in the underlying arrangement are classified (for example, as debt or equity) under general principles of Federal income tax law. Gain must be recognized if a regular interest is exchanged either for an interest not classified as debt or for an interest classified as debt that differs materially either in kind or extent. No loss may be recognized on the exchange. The basis of an interest in the underlying arrangement equals the basis in the regular interest exchanged for it, increased by any gain recognized on the exchange under this paragraph (c)(3).

(d) *Disregarding inadvertent failures to remain qualified*—(1) If a qualified arrangement that ceases to be a FASIT meets the requirements of paragraph (d)(2) of this section, then the Commissioner may either—

(i) Deem the qualified arrangement as continuing to be a FASIT notwithstanding the cessation; or

(ii) Allow the qualified arrangement to re-elect FASIT status after cessation notwithstanding the prohibition in section 860L(a)(4) .

(2) The requirements of this paragraph are satisfied if —

(i) The Commissioner determines that the cessation was inadvertent;

(ii) No later than a reasonable time after the discovery of the event resulting in the cessation, steps are taken so that all of the requirements for a FASIT are satisfied; and

(iii) The qualified arrangement and each person holding an interest in the qualified arrangement at any time during the period the qualified arrangement failed to qualify as a FASIT agree to make such adjustments (consistent with the treatment of the qualified arrangement as a FASIT or the treatment of the Owner as a C corporation) as the Commissioner may require with respect to such period.

§ 1.860H–4 Regular interests in general.

(a) *Issue price of regular interests*—(1) *Regular interests not issued for property.* The issue price of a FASIT regular interest not issued for property is determined under section 1273(b).

(2) *Regular interests issued for property.* Notwithstanding sections 1273 and 1274 and the regulations thereunder, the issue price of a FASIT regular interest issued for property is the fair market value of the regular interest determined as of the issue date.

(b) *Special rules for high-yield regular interests*—(1) *High-yield interests held by a securities dealer*—(i) *Due date of tax imposed on securities dealer under section 860K(d).* The excise tax imposed under section 860K(d) (treatment of high-yield interest held by a securities dealer that is not an eligible corporation) must be paid on or before the due date of the securities dealer's Federal income tax return for the earlier of the taxable year in which the securities dealer—

(A) Ceases to be a dealer in securities; or

(B) Commences holding the high-yield interest for investment.

(ii) [Reserved]

(2) *High-yield interests held by a pass-thru*—(i) *Nature and due date of tax imposed under section 860K(e).* The tax imposed under section 860K(e) (treatment of high-yield interest held by a pass-thru entity) is an excise tax which must be paid on or before the due date of the pass-thru entity's Federal income tax return for the taxable year in which the pass-thru entity issues the debt or equity interest described in section 860K(e).

(ii) *Pass-thru entity includes REMIC.* For purposes of section 860K(e), a pass-thru entity includes a real estate mortgage investment conduit (REMIC) as defined in section 860D.

§ 1.860H–5 Foreign resident holders of regular interests.

(a) *Look-through to underlying FASIT debt.* If, during the same period, a foreign resident holds (either directly or through a vehicle which itself is not subject to the Federal income tax such as a partnership or trust) a regular interest in a FASIT and a conduit debtor (as defined in paragraph (b) of this section) pays or accrues interest on a debt instrument held by the FASIT, then any interest received or accrued by the foreign resident with respect to the regular interest during that period is treated as received or accrued from the conduit debtor. This rule applies to both the foreign resident holder of the FASIT regular interest and the conduit debtor for all purposes of subtitle A and the regulations thereunder.

(b) *Conduit debtor.* A debtor is a conduit debtor if the debtor is a U.S. resident taxpayer or a foreign resident taxpayer to which interest expense paid or accrued with respect to the debt held by the FASIT is treated as paid or accrued by a U.S. trade or business of the foreign taxpayer under section 884(f)(1)(A), and the foreign resident holder described in paragraph (a) of this section—

(1) Is a 10-percent shareholder of the debtor (within the meaning of section 871(h)(3)(B));

(2) Is a controlled foreign corporation, but only if the debtor is a related person (within the meaning of section 864(d)(4)) with respect to the controlled foreign corporation; or

(3) Is related to the debtor (within the meaning of section 267(b) or 707(b)(1)).

(c) *Limitation.* The amount of income treated under paragraph (a) of this section as received from a conduit debtor is the lesser of—

(1) The income received or accrued by the foreign resident holder with respect to the FASIT regular interest; or

(2) The amount paid or accrued by the conduit debtor with respect to the debt instrument held by the FASIT.

(d) *Cross references.* For the treatment of related-party interest accrued to foreign related persons, see sections 163(e)(3), 163(j), 871(h)(3), 881(c)(3)(B), and 881(c)(3)(C).

§ 1.860H–6 Taxation of Owner, Owner's reporting requirements, transfers of ownership interest.

(a) *In general.* For purposes of determining an Owner's credits and taxable income, all assets, liabilities, and items of income, gain, deduction, loss, and credit of the FASIT are treated as assets, liabilities, and such items of the Owner.

(b) *Constant yield method to apply.* The income from each debt instrument a FASIT holds is determined by applying the constant yield method (including the rules of section 1272(a)(6)) described in § 1.1272–3(c).

(c) *Method of accounting for, and character of, hedges.* The method of accounting used for a permitted hedge (as described in § 1.860H–2(e)) must clearly reflect income and otherwise comply with the rules of § 1.446–4 (whether or not the permitted hedge instrument is part of a hedging transaction as defined in § 1.1221–2(b)). The character of any gain or loss realized on a permitted hedge (as described in § 1.860H–2(e)) is ordinary.

(d) *Coordination with mark-to market provisions*—(1) *No mark to market accounting.* Mark to market accounting does not apply to any asset (other than a non-permitted asset) while it is held, or deemed held, by a FASIT.

(2) *Transfer of a mark to market asset to a FASIT.* If an Owner transfers a permitted asset to a FASIT and the asset would have been marked to market if the taxable year had ended immediately before the transfer (for example, an asset accounted for under section 475(a)), then immediately before the transfer, the Owner must mark the asset to market and take gain or loss into account as if the taxable year had ended at that point. See § 1.475(b)–1(b)(4). If the asset is a debt instrument that is valued under the special valuation rule of § 1.860I–2(a), then immediately after the asset is marked to market under this paragraph (d)(2), the asset is also valued under § 1.860I–2(a), and any additional gain is taken into account under section 860I. The latter gain, but not any mark to market gain, is subject to section 860J.

(e) *Owner's annual reporting requirements.* Unless the Commissioner otherwise prescribes, specified information regarding the FASIT must be reported by means of a separate statement, attached by the Owner to its income tax return for the taxable year that includes the reporting period. The reporting period is the period in the Owner's taxable year during which the Owner holds the ownership interest in the FASIT. Unless the Commissioner otherwise requires, the statement must set forth—

(1) The name, address, and taxpayer identification number (if any) of the FASIT and any other information necessary to establish the identity of the FASIT for which the statement is being filed;

(2) If the ownership interest was acquired from another person during the Owner's taxable year, the date on which it was acquired, and the name and address of the person from which it was acquired;

(3) If the ownership interest was transferred by the Owner during the Owner's taxable year, the date on which it was transferred, the name and address of the person to which it was transferred, and whether such person is described in section 860L(a)(2);

(4) If any regular interests are issued during the reporting period, a description of the prepayment and reinvestment assumptions that are made pursuant to section 1272(a)(6) and any regulations thereunder, including a statement supporting the selection of the prepayment assumption;

(5) The FASIT's items (taken into account during the reporting period) of income, gain, loss, deduction and credit from permitted transactions, and separately stated, the FASIT's items (taken into account during the reporting period) of income, gain, loss, deduction and credit from prohibited transactions;

(6) Information detailing the extent to which the items described in paragraph (f)(5) of this section consist of interest accrued that, but for section 860H(b)(4), is exempt from the taxes imposed under subtitle A of 26 U.S.C.; and

(7) If a qualified arrangement ceases to be a FASIT during a reporting period (including at the close of a reporting period), information disclosing—

(i) The effective date of the cessation;

(ii) A description of how the cessation occurred; and

(iii) A statement regarding whether the arrangement will continue after cessation and, if so, the continuing arrangement's name, address, and taxpayer identification number.

(f) *Treatment of FASIT under subtitle F of Title 26 U.S.C.* For purposes of subtitle F (Procedure and Administration)—

(1) A FASIT is treated as a branch or division of the Owner;

(2) The Owner is treated as the issuer of the regular interests; and

(3) The regular interests are treated as collateralized debt obligations as defined in §1.6049–7(d)(2).

(g) *Transfer of ownership interest*—(1) *In general.* If, at the time of any transfer of the ownership interest, the Owner knew or should have known that the transferee would be unwilling or unable to pay some or all of the tax arising from the application of section 860H(b), then the transfer is disregarded for all Federal tax purposes.

(2) *Safe harbor for establishing lack of improper knowledge.* A transfer will not be disregarded under paragraph (g)(1) of this section if the rules of § 1.860E–1(c)(4) (safe harbor for establishing lack of improper knowledge on the transfer of a non-economic REMIC residual interest) are satisfied with respect to the FASIT ownership interest.

§ 1.860I–1 Gain recognition on property transferred to FASIT or supporting FASIT regular interests.

(a) *In general*—(1) Except as provided in paragraphs (a)(2) and (d) of this section, the Owner of a FASIT (or a related person) must recognize gain (if any) on—

(i) Property the Owner (or the related person) transfers either to the FASIT or its regular interest holders;

(ii) Support property; and

(iii) Property acquired by the FASIT as foreclosure property and held beyond the grace period allowed for foreclosure property.

(2) An Owner (or a related person) does not have to recognize gain under section 860I or paragraph (a)(1) of this section on a transfer or pledge of property to a regular interest holder, if the Owner (or the related person) makes the transfer or pledge in a capacity other than as Owner (or related person), and the regular interest holder receives the transfer or pledge in a capacity other than regular interest holder.

(b) *Support property defined.* Property is *support property* if the Owner (or a related person)—

(1) Pledges the property, directly or indirectly, to pay a FASIT regular interest, or otherwise identifies the property as providing security for the payment of a FASIT regular interest;

(2) Sets aside the property for transfer to a FASIT under any agreement or understanding; or

(3) Holds an interest in the property that is subordinate to the FASIT's interest in the property (for example, the Owner holds subordinate interests in a pool of mortgages and the FASIT holds senior interests in the same pool).

(c) *Timing of gain determination and recognition.* Gain is determined and recognized under paragraph (a)(1) of this section immediately before the property is transferred to the FASIT or becomes support property, or in the case of foreclosure property, on the day immediately following the termination of the grace period allowed for foreclosure property.

(d) *Gain deferral election.* [Reserved]

(e) *Amount of gain.* Except as provided in paragraph (f) of this section, the amount of gain recognized under paragraph (a)(1) of this section is the same as if the Owner (or the related person) had sold the property for its value as determined under § 1.860I–2.

(f) *Recordkeeping requirements.* The Owner is required to maintain such books and records as may be necessary or appropriate to demonstrate that the requirements of this section are satisfied.

(g) *Special rule applicable to property of related persons.* Except in the case of property traded on an established securities market (as defined in § 1.860I–2(b)), if a related person holds property that becomes support property, or if a related person transfers property to a FASIT or its regular interest holders, then for purposes of applying the gain recognition provisions of this section—

(1) The related person is treated as transferring the property to the Owner for the property's fair market value as

determined under general tax principles; and

(2) The Owner is treated as transferring the property to the FASIT for the property's value as determined under § 1.860I–2.

§ 1.860I–2 Value of property.

(a) *Special valuation rule.* For purposes of section 860I(d)(1)(A), except as provided in paragraph (c) of this section, the value of a debt instrument not traded on an established securities market is the present value of the reasonably expected payments on the instrument determined—

(1) As of the date the instrument is to be valued (as described in § 1.860I–1(c)); and

(2) By using a discount rate equal to 120 percent of the applicable federal rate, compounded semi-annually, for instruments having the same term as the weighted average maturity of the reasonably expected payments on the instrument. For this purpose, the applicable federal rate is the rate prescribed under section 1274(d) for the period that includes the date the instrument is valued (as described in § 1.860I–1(c)).

(b) *Traded on an established securities market.* For purposes of section 860I(d)(1)(A), a debt instrument is traded on an established securities market if it is traded on a market described in § 1.1273–2(f) (2), (3), or (4).

(c) *Reasonably expected payments*—(1) *In general.* Reasonably expected payments on an instrument must be determined in a commercially reasonable manner and, except as otherwise provided in this section (c), may take into account reasonable assumptions concerning early repayments, late payments, non-payments, and loan servicing costs. No other assumptions may be considered.

(2) *Consistency requirements.* Except as provided in paragraph (c)(3) of this section, any assumption used in determining the reasonably expected payments on an instrument must be consistent with (and no less favorable than) the first of the following categories that applies—

(i) Representations made in connection with the offering of a regular interest in the FASIT;

(ii) Representations made to any nationally recognized statistical rating organizations;

(iii) Representations made in any filings or registrations with any governmental agency with respect to the FASIT; and

(iv) Industry customs or standards (as defined in paragraph (e) of this section).

(3) *Servicing costs.* Notwithstanding paragraph (c)(2) of this section, the amount of loan servicing costs assumed may not exceed the lesser of—

(i) The amount the FASIT agrees to pay the Owner for servicing the loans held by the FASIT if the Owner is providing the servicing; or

(ii) The amount a third party would reasonably pay for servicing identical loans.

(4) *Nonconforming or unreasonable assumptions.* If a taxpayer, in determining the expected payments on an instrument, takes into account an assumption that either fails to meet the requirements of paragraph (c)(2) or (3) of this section or is unreasonable, the Commissioner may determine the reasonably expected payments on the instrument without the assumption. Thus, for example, if a taxpayer makes an unreasonable assumption concerning non-payments, the Commissioner may compute expected payments without any adjustment for non-payments.

(d) *Special rules*—(1) *Beneficial ownership interests.* A certificate representing beneficial ownership of a debt instrument, is deemed to represent beneficial ownership of a debt instrument traded on an established securities market, if either —

(i) The certificate is traded on an established securities market; or

(ii) The certificate represents ownership in a pool of assets composed solely of debt instruments all of which are traded on established securities markets.

(2) *Stripped interests.* A stripped bond or stripped coupon (as defined in section 1286(e)) not otherwise traded on an established securities market is considered as being traded on an established securities market, if—

(i) The underlying bond (the bond from which the stripped bond or stripped coupon is created) is traded on an established securities market; and

(ii) The stripped bond or stripped coupon is valued using a commercially reasonable method based on the market value of the underlying bond.

(3) *Contemporaneous purchase and transfer of debt instruments*—(i) Notwithstanding paragraph (a) of this section, the value of a debt instrument not traded on an established securities market is its cost to the Owner (or a related person) if—

(A) The debt instrument is purchased from an unrelated person in an arm's length transaction in which no other property is transferred or services provided;

(B) The debt instrument is acquired solely for cash;

(C) The price of the debt instrument is fixed no more than 15 days before the date of purchase; and

(D) The debt instrument is transferred to the FASIT no more than 15 days after the date of purchase.

(ii) For purposes of paragraph (d)(3)(i) of this section, the date of purchase is the earliest date on which the burdens and benefits of ownership of the debt instrument irrevocably pass to the Owner (or a related person).

(4) *Guarantees.* Notwithstanding paragraph (c)(1) of this section, if a guarantee qualifying as a permitted hedge under this paragraph (d) relates solely to a debt instrument not traded on an established securities market and the taxpayer determines the reasonably expected payments on the debt instrument by including the reasonably expected payments on the guarantee, then the guarantee and the property need not be valued separately.

(e) *Definitions.* For purposes of § 1.860I–2—

(1) An *industry custom* is any long-standing practice in use by entities that engage in asset securitization as part of their ordinary business activities; and

(2) An *industry standard* is any standard that is both—

(i) Commonly used in evaluating the expected payments on securitized debt instruments (or debt instruments pending securitization) in similar transactions; and

(ii) Disseminated through written or electronic means by any independent, nationally recognized trade association or other authority that is recognized as competent to issue the standard.

§ 1.860J–1 Non-FASIT losses not to offset certain FASIT inclusions.

(a) *In general.* For purposes of applying section 860J(a)(1), an Owner's taxable income from a FASIT includes any gains recognized by the Owner under § 1.860I–1(a).

(b) *Special rule for holders of multiple ownership interests.* For purposes of applying section 860J and the rules of § 1.860J–1, a person may aggregate the net income (or loss) from all FASITs in which the person holds the ownership interest.

(c) *Related persons*—(1) *Taxable income.* The taxable income of a related person for any taxable year is no less than the sum of—

(i) The amounts specified in section 860J(a); plus

(ii) Any gains recognized under § 1.860I–1(a).

(2) *Effect on net operating loss.* Any increase in a related person's taxable income attributable to paragraph (c)(1) of this section is disregarded—

(i) In determining under section 172 the amount of the related person's net operating loss for the taxable year; and

(ii) In determining the related person's taxable income for such taxable year for purposes of the second sentence of section 172(b)(2).

(3) *Coordination with minimum tax.* For purposes of part VI of subchapter A of chapter 1 of subtitle A of Title 26 U.S.C., the alternative minimum taxable income of any related person is in no event less than the related person's taxable income as computed under paragraph (c)(1) of this section.

§ 1.860L–1 Prohibited transactions.

(a) *Loan origination*—(1) *In general.* Section 860L(e) imposes a prohibited transactions tax on the receipt of any income derived from any loan originated by a FASIT. Except as provided in paragraphs (a)(2) and (3) of this section, whether a FASIT originates a loan for purposes of section 860L(e) depends on all the facts and circumstances.

(2) *Acquisitions presumed not to be loan origination.* Except as provided in paragraph (a)(3) of this section, a FASIT is considered not to have originated a loan if the FASIT acquires the loan—

(i) From an established securities market described in § 1.1273–2(f)(2), (3), or (4);

(ii) On a date more than 12 months after the loan was issued; or

(iii) From a person (including the Owner or a related person) that regularly originates similar loans (such as through a standardized contract) in the ordinary course of its business.

(3) *Activities presumed to be loan origination.* (i) Notwithstanding paragraph (a)(2) of this section, a FASIT is considered to originate a loan if the FASIT either engages in or facilitates (other than through a person from whom the FASIT acquires the loan and who is described in paragraph (a)(2)(iii) of this section)—

(A) Soliciting the loan, including advertising to solicit borrowers, accepting the loan application, or generally making any offer to lend funds to any person;

(B) Evaluating an applicant's financial condition;

(C) Negotiating or establishing any terms of the loan;

(D) Preparing or processing any document related to negotiating or entering into the loan; or

(E) Closing the loan transaction.

(ii) For purposes of paragraph (a)(3)(i) of this section, if a FASIT enters into a contract to engage in purchases described in paragraph (a)(2)(iii) of this section, the FASIT is not treated as originating the loans it acquires solely because it was a party to the contract.

(4) *Loan workouts.* If a FASIT holds a loan, the FASIT is not treated as originating a new loan that it receives from the same obligor in exchange for the old loan in the context of a workout.

(b) *Origination of a contract or agreement in the nature of a line of credit*—(1) *In general.* A FASIT is presumed not to have originated a contract or agreement in the nature of a line of credit if the FASIT acquires the contract or agreement from a person (including the Owner or a related person) that regularly originates similar contracts or agreements in the ordinary course of its business.

(2) *Activities presumed to be origination.* If a FASIT assumes the role of a lender under a contract or agreement in the nature of a line of credit from a person that does not regularly originate similar contracts or agreements in the ordinary course of its business, the FASIT is considered to originate the contract or agreement if, with respect to the contract or agreement, the FASIT engages in any of the activities described in paragraphs (A) through (E) of § 1.860L-1(a)(3)(i) of this section.

(3) *Debt instruments issued under contracts or agreements in the nature of a line of credit.* If a FASIT acquires a debt instrument as a result of the FASIT's position as a lender under a contract or agreement in the nature of a line of credit, the FASIT is presumed to have originated the debt instrument if and only if the FASIT originated the related contract or agreement.

(c) *Disposition of debt instruments.* Notwithstanding sections 860L(e)(3)(B)(i) and (ii) (certain exceptions from the prohibited transactions tax), the distribution to the Owner of a debt instrument contributed by the Owner, and the transfer to the Owner of one debt instrument in exchange for another, are prohibited transactions, if within 180 days of receiving the debt instrument the Owner realizes a gain on the disposition of the instrument to any person, regardless of whether the realized gain is recognized.

(d) *Exclusion of prohibited transactions tax to dispositions of hedges.* The rules of section 860L(e) and paragraph (b) of this section do not apply to the disposition of any asset described in section 860L(c)(1)(D).

§ 1.860L–2 Anti-abuse rule.

(a) *Intent of FASIT provisions.* Part V of subchapter M of the Internal Revenue Code (the FASIT provisions) is intended to promote the spreading of credit risk on debt instruments by facilitating the securitization of those debt instruments. Implicit in the intent of the FASIT provisions are the following requirements—

(1) Assets to be securitized through a FASIT consist primarily of permitted debt instruments;

(2) The source of principal and interest payments on a FASIT's regular interests is primarily the principal and interest payments on permitted debt instruments held by the FASIT (as opposed to receipts on other assets or deposits of cash); and

(3) No FASIT provision may be used to achieve a Federal tax result that cannot be achieved without the provision unless the provision clearly contemplates that result.

(b) *Application of FASIT provisions.* The FASIT provisions and the FASIT regulations must be applied in a manner consistent with the intent of the FASIT provisions as set forth in paragraph (a) of this section. Therefore, if a principal purpose of forming or using a FASIT is to achieve results inconsistent with the intent of the FASIT provisions and the FASIT regulations, the Commissioner may make any appropriate adjustments with regard to the FASIT and any arrangement or transaction (or series of transactions) involving the FASIT. The Commissioner's authority includes—

(1) Disregarding a FASIT election;

(2) Treating one or more assets of a FASIT as held by a person or persons other than the Owner;

(3) Allocating FASIT income, loss, deductions and credits to a person or persons other than the Owner;

(4) Disallowing any item of FASIT income, loss, deduction, or credit;

(5) Treating the ownership interest in a FASIT as held by a person other than the nominal holder;

(6) Treating a FASIT regular interest as other than a debt instrument; and

(7) Treating a regular interest held by any person as having the same tax characteristics as one or more of the assets held by the FASIT.

(c) *Facts and circumstances analysis.* Whether a FASIT is created or used for a principal purpose of achieving a result inconsistent with the intent of the FASIT provisions is determined based on all of the facts and circumstances, including a comparison of the purported business purpose for a transaction and the claimed tax benefits resulting from the transaction.

(d) *Effective date.* This section is applicable on February 4, 2000.

§ 1.860L–3 Transition rule for pre-effective date FASITs.

(a) *Scope.* This section applies if a pre-effective date FASIT has one or

more pre-FASIT interests outstanding on the startup day of the FASIT.

(1) *Pre-effective date FASIT defined.* A *pre-effective date FASIT* is a FASIT whose underlying qualifying arrangement was in existence on August 31, 1997.

(2) *Pre-FASIT interest defined.* A *pre-FASIT interest* is an interest in a pre-effective date FASIT that—

(i) Was issued before February 4, 2000;

(ii) Was outstanding on the date the FASIT election for the underlying qualifying arrangement goes into effect; and

(iii) Is considered debt of the Owner under general principles of Federal income tax law.

(3) *FASIT gain defined.* For purposes of this section, the term FASIT gain means any gain that the Owner of a pre-effective date FASIT must recognize under the rules of this section.

(b) *Election to defer gain.* The Owner of a pre-effective date FASIT may elect to defer the recognition of FASIT gain on assets that are held by the FASIT but that are allocable to pre-FASIT interests. An Owner that elects under this section must establish a method of accounting for its FASIT gain. To clearly reflect income, this method must periodically determine the aggregate amount of FASIT gain on all of the assets in the FASIT and exclude the portion of the FASIT gain attributable to the pre-FASIT interests.

(c) *Safe-harbor method.* This paragraph (c) provides a safe-harbor method for determining the amount of FASIT gain that can be deferred under this section. The method has the following steps:

(1) *Step one: Establish pools*—(i) *Group assets into pools.* The Owner must group the assets of the FASIT into one or more pools. No pool may contain assets of more than one of the following three types—

(A) Assets that are valued under the special valuation rule of § 1.860I–2(a) and that have FASIT gain on the first day held by the FASIT;

(B) Assets that are valued for FASIT gain purposes under a standard other than the special valuation rule of § 1.860I–2(a) and that have FASIT gain on the first day held by the FASIT; and

(C) Assets that do not have FASIT gain on the first day held by the FASIT.

(ii) *Treatment of pools.* If a pool contains assets described in paragraph (c)(1)(i)(A) or (B) of this section, the Owner must apply paragraphs (c)(2) through (5) of this section to the pool. If a pool contains assets described in paragraph (c)(1)(i)(C) of this section, the pool is ignored for FASIT gain purposes.

(2) *Step two: Determine the FASIT gain (or loss) at the pool level*—(i) *In general.* For each taxable year, the FASIT gain (or loss) at the pool level is equal to the net increase (or decrease) in the value of the pool minus the income that is included with respect to the pool under general income tax principles (without regard to the FASIT rules). For purposes of the preceding sentence, the net increase (or decrease) in the value of the pool is equal to—

(A) The sum of the value of the pool (as determined under § 1.860I–2) at the end of the taxable year and the amount of any cash distributed (even if reinvested) from the pool during the taxable year; minus

(B) The sum of the value of the pool (as determined under § 1.860I–2) at the end of the previous taxable year and the Owner's adjusted basis in the assets contributed to the pool during the taxable year.

(ii) *Limitation.* This paragraph applies if the calculation in paragraph (c)(2)(i) of this section produces a loss for the taxable year and the amount of the loss exceeds the net amount of the FASIT gain from the pool in all prior years. In this case, the amount of the loss for the current year is limited to the amount of net FASIT gain for all previous years.

(3) *Step three: Determine the percentage of total FASIT gain that must be recognized by the end of the current taxable year.* The percentage of FASIT gain that must be recognized by the end of the current taxable year is equal to 100 percent minus the percentage of FASIT gain that may be deferred at the end of the current taxable year. The percentage of FASIT gain that may be deferred at the end of the taxable year is equal to the lesser of 100 percent and the ratio of—

(i) The product of 107 percent and aggregate adjusted issue prices of all pre-FASIT interests outstanding on the last day of the taxable year; over

(ii) The total value of all assets held by the FASIT on the last day of the taxable year.

(4) *Step four: Determine the total amount of FASIT gain that is not attributed to pre-effective date FASIT interests.* The total amount of FASIT gain that is not attributed to pre-effective date FASIT interests is equal to the product of—

(i) The sum of the amount of FASIT gain (as determined under paragraph (c)(2) of this section) for the current taxable year and all previous taxable years; and

(ii) The percentage of FASIT gain that must be recognized in the current taxable year (as determined under paragraph (c)(3) of this section).

(5) *Step five: Determine the amount of FASIT gain (or loss) to be recognized in the taxable year.* For the taxable year that includes the startup date, the amount of FASIT gain to be recognized is equal to the total amount of FASIT gain not attributable to pre-effective date FASIT interests (as determined under paragraph (c)(4) of this section). Thereafter, the amount of FASIT gain (or loss) to be recognized in a given taxable year is equal to the total amount of FASIT gain not attributable to pre-effective date FASIT interests for that taxable year (as determined under paragraph (c)(4) of this section) less the amount of FASIT gain not attributable to pre-effective date FASIT interests for the immediately preceding taxable year (as determined under paragraph (c)(4) of this section).

(d) *Example.* The rules of this section are illustrated by the following example:

Example. (i) *Facts. O* is an eligible corporation within the meaning of section 860(a)(2) that uses the calendar year as its taxable year. On July 1, 1996, *O* forms *TR*, a trust. Shortly thereafter, *O* contributes credit card receivables to *TR* and *TR* issues certificates that, for Federal income tax purposes, are characterized as debt of *O*. Effective March 31, 1999, *O* elects FASIT status for *TR*. On March 31, 1999, *TR* holds credit card receivables that have an outstanding principal balance of $20,000,000 and *TR* has outstanding certificates (that are characterized for Federal income tax purposes as debt of *O*) that have an aggregate adjusted issue price of $10,000,000.

(ii) *Status as a pre-effective date FASIT. TR* is a pre-effective date FASIT because *TR* was a trust that was in existence on August 31, 1997. The certificates outstanding on March 1, 1999, are pre-FASIT interests because they were outstanding on March 31, 1999, and they were considered debt of *O* under general principles of Federal income tax law.

(iii) *Facts: 1999.* From April 1, 1999, through December 31, 1999, the credit card receivables held by *TR* generated $800,000 of taxable income and $4,000,000 of total cash flow. *TR* distributed $2,500,000 of the cash flow to *O* in exchange for new receivables having an outstanding principal balance of $2,500,000. *TR* used the remaining $1,500,000 of cash flow to make payments on its outstanding debt instruments. On December 31, 1999, *TR* contributed additional credit card receivables with an outstanding principal balance of $10,700,000 and an aggregate adjusted basis of $10,700,000. On December 31, 1999, *TR* held credit card receivables that had an outstanding principal balance of $30,000,000, an aggregate adjusted basis of $30,000,000, and a value (as determined under § 1.860I–2(a)) of $30,300,000. In addition, on December 31, 1999, the outstanding adjusted issue price of the pre-FASIT interests was $9,000,000.

(iv) *FASIT gain recognition for 1999*—(A) *Establish pools. TR* elects to defer gain recognition under the safe harbor method.

Consistent with paragraph (c)(1) of this section, *TR* groups the assets of the FASIT into a single pool because all of the assets of the FASIT are credit card receivables subject to the special valuation rule of § 1.860I–1(a) and the assets have FASIT gain on the date they are acquired by the FASIT.

(B) *Determination of FASIT gain for 1999.* The sum of the value of the pool at the end of 1999 ($30,300,000) and the cash distributed during 1999 ($4,000,000) is $34,300,000. There are three contributions of assets by *O* during 1999: one of $20,000,000 on March 31, 1999; one of $2,500,000 over the course of 1999; and an additional contribution of $10,700,000 on December 31, 1999. Thus, *O*'s basis in assets contributed to the pool during 1999 is $33,200,000. The net increase in the value of the pool is $1,100,000 ($34,300,000 minus $33,200,000). Under paragraph (c)(2) of this section, the FASIT gain for 1999 is $300,000 ($1,100,000 net increase in value minus $800,000 taxable income).

(C) *Determination of percentage of total FASIT gain that must be recognized by the end of 1999.* Under paragraph (c)(3) of this section, the percentage of FASIT gain that may be deferred for the taxable year is 31.78 percent (107 percent × $9,000,000 adjusted issue price of pre-FASIT interests divided by $30,300,000 value of the assets). The percentage of the FASIT gain that must be recognized is for the taxable year, therefore, 68.22 percent (1—31.78 percent).

(D) *Determination of total amount of FASIT gain not attributed to pre-effective date FASIT interests in 1999.* Under paragraph (c)(4) of this section, the total amount of FASIT gain not attributed to pre-effective date FASIT interests in 1999 is $204,660 ($300,000 FASIT gain × 68.22 percent).

(E) *Determine the amount of FASIT gain to be recognized in 1999.* Under paragraph (c)(5) of this section, because 1999 includes the startup date, *TR* must include in income the entire $204,660 of FASIT gain not attributed to pre-effective date FASIT interests.

(v) *Facts: 2000.* In 2000, the credit card receivables held by *TR* generated $1,500,000 of taxable income and $5,000,000 of cash flow. *TR* distributed $4,000,000 of the cash flow to *O* in exchange for new receivables having an outstanding principal balance of $4,000,000. *TR* used the remaining $1,000,000 of cash flow to make payments on its outstanding debt instruments. On December 31, 2000, *TR* contributed additional credit card receivables with an outstanding principal balance of $9,500,000 and an aggregate adjusted basis of $9,500,000. On December 31, 2000, *TR* held credit card receivables that had an outstanding principal balance of $40,000,000, an aggregate adjusted basis of $40,000,000, and a value (as determined under § 1.860I–2(a)) of $40,800,000. In addition, on December 31, 2000, the outstanding adjusted issue price of the pre-FASIT interests was $8,500,000.

(vi) *FASIT gain recognition for 2000*—(A) *Determination of FASIT gain for 2000.* The sum of the value of the pool on December 31, 2000 ($40,800,000) and the cash distributed during 2000 ($5,000,000) is $45,800,000. The value of the pool on December 31, 1999, was $30,300,000. During 2000, *O* contributed receivables in which *O* had a basis of $13,500,000 ($4,000,000 over the course of the year and $9,500,000 on December 31, 2000). The net increase in the value of the pool during 2000 is $2,000,000 ($45,800,000 minus $43,800,000). Under paragraph (c)(2), the FASIT gain for 2000 is $500,000 ($2,000,000 net increase in value minus $1,500,000 taxable income).

(B) *Determination of percentage of total FASIT gain that must be recognized by the end of 2000.* Under paragraph (c)(3), the percentage of FASIT gain that may be deferred for the taxable year is 22.29 percent (107 percent times $8,500,000 adjusted issue price of pre-FASIT interests divided by $40,800,000 value of the assets). The percentage of the FASIT gain that must be recognized is, therefore, 77.71 percent (1—22.29 percent).

(C) *Determination of total amount of FASIT gain not attributed to pre-effective date FASIT interests in 2000.* Under paragraph (c)(4) of this section, the total amount of FASIT gain not attributed to pre-effective date FASIT interests in 2000 is $388,500 ($500,000 FASIT gain multiplied by 77.71 percent).

(D) *Determine the amount of FASIT gain to be recognized in 2000.* Under paragraph (c)(5) of this section, the FASIT gain to be recognized for 2000 is equal to the FASIT gain that not attributable to pre-effective date FASIT interests in 2000 ($388,500) minus the FASIT gain not attributable to pre-effective date FASIT interests in 1999 ($204,660). Thus, in 2000, *TR* must include $183,840.

(e) *Election to apply gain deferral retroactively.* The Owner of a pre-effective date FASIT, including a pre-effective date FASIT having a startup date before February 4, 2000, may apply the rules of paragraph (a) of this section for the period beginning on the startup date by making an election in the manner prescribed by the Commissioner.

(f) *Effective date.* This section is applicable on February 4, 2000.

§ 1.860L–4 Effective date.

Except as otherwise provided in § 1.860L–2(e) (relating to the rules on anti-abuse) and § 1.860L–3(f) (relating to the rules governing transition entities) this section is applicable on the date final regulations are filed with the **Federal Register**.

Par. 4. Section 1.861–9T is amended by redesignating the text of paragraph (g)(2)(iii) as paragraph (g)(2)(iii)(A) and adding a heading to new paragraph (g)(2)(iii)(A), and adding paragraph (g)(2)(iii)(B):

§ 1.861–9T Allocation and apportionment of interest expense (temporary regulations).

* * * * *

(g) * * *

(2) * * *

(iii) *Adjustment for directly allocated interest*—(A) *Nonrecourse indebtedness and integrated financial transactions.*

* * *

(B) *FASIT Interest Expense.* The rules of paragraph (g)(2)(iii)(A) of this section shall also apply to all assets to which FASIT interest expense is directly allocated during the current taxable year under the rules of § 1.861–10T(f). This paragraph (g)(2)(iii)(B) applies on the date final regulations are filed with the **Federal Register**.

Par. 5. Section 1.861–10T is amended by—

1. Revising paragraph (a); and
2. Adding paragraph (f).

§ 1.861–10T Special allocations of interest expense (temporary regulations).

(a) *In general.* This section applies to all taxpayers and provides four exceptions to the rules of § 1.861–9T that require the allocation and apportionment of interest expense on the basis of all assets of all members of the affiliated group. Paragraph (b) of this section describes the direct allocation of interest expense to the income generated by certain assets that are subject to qualified nonrecourse indebtedness. Paragraph (c) of this section describes the direct allocation of interest expense to income generated by certain assets that are acquired in integrated financial transactions. Paragraph (d) of this section provides special rules that are applicable to all transactions described in paragraphs (b) and (c) of this section. Paragraph (e) of this section requires the direct allocation of third party interest of an affiliated group to such group's investment in related controlled foreign corporations in cases involving excess related person indebtedness (as defined therein). Paragraph (f) of this section provides rules for the direct allocation and apportionment of all FASIT interest expense to all FASIT gross income, on the basis of all FASIT assets. See also § 1.861–9T(b)(5), which requires direct allocation of amortizable bond premium.

* * * * *

(f) *FASIT Interest Expense*—(1) *In general.* All FASIT interest expense of the taxpayer's affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group) shall be directly allocated solely to the FASIT gross income of the affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group).

(2) *Asset method.* Interest expense that is directly allocated under this paragraph (f) shall be treated as directly related to all the activities and assets of all FASITs in which the taxpayer or any

member of the taxpayer's affiliated group holds the ownership interest. The directly allocated interest expense shall be apportioned among all of the FASIT gross income of the affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group) under the asset method described in § 1.861–9T(g).

(3) *FASIT period.* After a FASIT's startup day (as defined in section 860L(d)(1)), the taxpayer must allocate the interest expense of the FASIT according to the rules of this paragraph (f) during the entire period that the arrangement continues to be a FASIT. If an arrangement ceases to be a FASIT, interest expense with respect to the ceased FASIT arrangement shall no longer be allocated and apportioned under the rules of this paragraph (f) as of the time the arrangement is treated as having ceased in accordance with § 1.860H–3(b). The Commissioner may continue to allocate interest expense with respect to a ceased FASIT arrangement under this paragraph (f) if the Commissioner determines that the principal purpose of ending the arrangement's qualification as a FASIT was to affect the taxpayer's interest expense allocation.

(4) *Application of special rules.* In applying this paragraph (f), the rules of paragraph (d)(2)of this section shall apply.

(5) *Definitions.* For purposes of this paragraph (f):

(i) *FASIT defined.* FASIT has the meaning given such term in § 1.860H–1(a).

(ii) *FASIT interest expense defined.* (A) In general. FASIT interest expense means any amount paid or accrued by or on behalf of a FASIT to a holder of a regular interest in such FASIT, if such amount is—

(*1*) treated as incurred by the taxpayer or any member of the taxpayer's affiliated group by reason of § 1.860H–6(a), because the taxpayer or such member holds the ownership interest in a FASIT; and

(*2*) treated as interest by reason of section 860H(c).

(B) *Interest equivalents.* FASIT interest expense includes any expense or loss from a hedge that is a permitted asset (as described in § 1.860H–2 (d) and (e)), but only to the extent such expense or loss is an interest equivalent as described in § 1.861–9T(b).

(iii) *FASIT gross income defined.* FASIT gross income means gross income of the taxpayer's affiliated group (or the taxpayer, if the taxpayer is not a member of an affiliated group) treated as received or accrued by the taxpayer, or any member of the taxpayer's affiliated group, by reason of § 1.860H–6(a).

(iv) *Affiliated group defined.* Affiliated group has the meaning given such term by § 1.861–11T(d).

(6) *Coordination with other provisions.* If any FASIT interest expense is directly allocable under both this paragraph (f) and paragraph (b) or (c) (determined without regard to this paragraph (f)(6)), only the rules of this paragraph (f) shall apply.

(7) *Effective date.* The rules of this section apply for taxable years beginning after December 31, 1986. However, paragraphs (a) and (f) apply as of the date final regulations are filed with the **Federal Register**, and paragraph (e) applies to all taxable years beginning after December 31, 1991.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–1896 Filed 2–4–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 891]

RIN 1512–AA07

Expansion of Lodi Viticultural Area (98R–109P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition for expansion of the Lodi Viticultural Area. The proposed additions to the Lodi Viticultural Area are located in San Joaquin County, California, in the northern San Joaquin Valley. The additions are situated contiguous to the western and southern boundaries of the current viticultural area. The proposed western addition encompasses approximately 14,500 acres, of which 3,640 acres are planted to vineyards. Situated contiguous to the southern boundary of the viticultural area, the proposed southern addition encompasses approximately 66,600 acres, of which 5,600 acres are planted to vineyards. Attorney Christopher Lee, on behalf of nine (9) growers who own vineyards within the proposed expansion area, submitted the petition. According to the petitioner, the importance of Lodi as a viticultural area demands that particular care be taken in extending the viticultural area boundaries, in order to safeguard the region's identity, integrity, and reputation. The petitioner states that this petition adds only that land which meets all the historical and geographical criteria that distinguish the Lodi viticultural area.

DATES: Written comments must be received by April 7, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 891). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Liaison and Information, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Joyce Drake, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672–54624), which revised regulations in 27 CFR part 4 to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which are delineated in subpart C of part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

The petition to expand a current viticultural area should include:

(a) Historical or current evidence that the boundaries of the viticultural area to be expanded are as specified in the petition;

(b) Evidence relating to the geographical characteristics (climate,

soil, elevation, physical features, etc.) which distinguished the viticultural features of the proposed area from surrounding areas;

(c) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(d) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the expansion of the Lodi American viticultural area (AVA). The proposed additions to the Lodi AVA are located in San Joaquin County, California, in the northern San Joaquin Valley. Situated contiguous to the western boundary of the current viticultural area, the proposed western addition encompasses approximately 14,500 acres, of which 3,640 acres are planted to vineyards. Situated contiguous to the southern boundary of the viticultural area, the proposed southern addition encompasses approximately 66,600 acres, of which 5,600 acres are planted to vineyards.

Evidence That the Name of the Area Is Locally or Nationally Known

According to the petitioner, there is evidence of the region's local and national renown which was detailed in the Lodi viticultural area petition submitted to the ATF in August of 1982, and summarized in the final rulemaking for the Lodi viticultural area, published in the **Federal Register** on February 13, 1986.

The petitioner states that he is persuaded after reviewing the evidence and consulting with growers in the Lodi viticultural area, that the current viticultural boundaries do not accurately encompass land historically and geographically recognized as within the Lodi grape growing region. The petitioner further states that, while not included in the original petition to establish the Lodi viticultural area, it is now apparent that the two additions proposed in this petition, the first along the western boundary adjacent to Interstate Highway 5, the second along the southeastern boundary south of the Calaveras River, should be included in the Lodi viticultural area because they share the viticultural area's name identification and geographical features. Further, the petitioner claims that the viticultural area and the proposed additions contrast sharply with land beyond the revised boundaries presented in this petition, which are geographically distinct from Lodi.

According to the petitioner, both *The Grape Districts of California H.I. Stoll* (1931) and *California Wine Country* (Lane Books 1968) define the Lodi grape growing region as a larger area than that presented in the original viticultural area petition. The former document additionally shows that the Lodi name was used in this context as early as 1931.

ATF approved the Lodi original petition in 1986, and determined that the name "Lodi" was recognized locally and nationally.

Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition

According to the petitioner, Lodi has a long viticultural history and strong regional identity. Precise boundaries for the region were not delineated until 1986 with the establishment of the Lodi viticultural area. The petitioner states that, in 1991, the Lodi name became associated with a second, far larger area with the creation of the Lodi-Woodbridge Wine Commission, established in California Crush District 11 by grower and winery mandate for the purposes of regional promotion, research and education. Per the petitioner, this petition does not attempt to reconcile these two entities. Rather, this petition proposes the previously described additions to the Lodi viticultural area which, based on name identity and natural features, should have been encompassed by the original petition. He stated that special care has been taken to assure that the modified boundaries maintain both the historic and geographic integrity of the existing Lodi viticultural area.

According to the petitioner and, as noted in the section addressing historical evidence, the Lodi grape-growing region is described in broader terms than those presented and approved in the original Lodi viticultural area petition. *The Soil Survey of the Lodi Area, California* (1937) states as follows: "Essentially comprising the northern half of the San Joaquin County, the Lodi area is bounded on the south by parallel 38 north latitude and on the north by the San Joaquin-Sacramento County line along Dry Creek and Mokelumn River. The western area includes a small part of Sacramento County and extends to the Sacramento River; and on the east it extends to the San Joaquin County line in the foothills of the Sierra Nevada."

The petitioner stated that, while similar to *The Soil Survey of the Lodi Area, California* in its overall depiction of Lodi's boundaries, *California Wine Country* defines the western boundary of the Lodi grape growing region in a slightly more restrictive manner stating "Lodi nestles within the angle formed by the meeting of the Sacramento and San Joaquin Rivers," but not extending to those rivers' banks.

The petitioner stated that *The Grape Districts of California* clearly shows that the Lodi grape growing region extends south beyond both the current southern boundary of the Lodi viticultural area and the latitude 38 degrees north limit detailed above, stating that, "The Lodi section takes in the south line of Stockton . . . while the Manteca, Escalon and Ripon sections take in from the south line of Stockton to the north to Stanislaus County line on the south." According to the petitioner, "Wines & Vines" magazine of September, 1936, confirms this extension, stating, "San Joaquin County's 60,065 acres in vines comprise two important districts, where some 47 varieties are grown commercially: the Lodi Section and the Manteca, Escalon and Ripon Section." The petitioner contends that, since Manteca, Escalon and Ripon are located 15 miles to 20 miles south of Stockton, near San Joaquin County's southern boundary, this description strongly suggests that vineyards situated to the east of Stockton were recognized as being within the Lodi grape growing region.

The petitioner believes that this evidence provides strong historical basis for modification of the Lodi viticultural area boundaries to those proposed in this petition.

According to the petitioner, the proposed additions encompassed by these boundary changes contain approximately 29 vineyards totaling 9,240 acres planted to vineyards. Approximately 80,000 acres in total are proposed for addition to the existing Lodi area. He further states that evidence presented in Section Three of this petition details the geographic features which distinguish them from surrounding areas. Although a few vineyards are situated just outside both revised boundaries, these exclusions are due to the conservative approach of this petition. This conservative approach requires that the land encompassed by the new boundaries meet both the historical and geographic standards established in the original Lodi viticultural area.

The petitioner states that the proposed expansion of the Lodi viticultural area is supported by growers in the region. The petitioner stated that the letter from Mr. Bob Schulenburg of the Lodi District Grape Growers

Association, Inc. reflects the general support this expansion has received from the Lodi viticultural community.

The petitioner states that the new boundaries of the Lodi viticultural area have been drawn to add only that land that meets the regulatory criteria set forth in 27 CFR 4.25a (e)(2). The proposed western boundary closely follows the zero (sea level) elevation west of Interstate Highway 5, while the proposed southern boundary follows State Highway 4 between Jack Tone Road and the San Joaquin County line. The petitioner stated that the areas proposed for inclusion in the viticultural area are supported by evidence of name and boundary recognition as well as by specific criteria including soils, climate, elevation and exposure, which distinguish them from areas to the west and south.

Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, Etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas

Climate

According to Mr. Steven Newman, Meteorologist, Earth Environment, Santa Rosa, California, the proposed additions to the existing Lodi viticultural area have a climate nearly identical to the existing appellation. Both additions receive the same moderating influences of the Sacramento Delta winds that define the current boundaries, while areas just outside have climates distinctly different from both the additions and land within the existing boundaries. Every significant climate feature, such as rainfall, degree-days, frost occurrence and mean temperatures, are virtually the same within the proposed additions as those that occur inside the existing Lodi viticultural area.

Mr. Newman stated that the area west of Interstate Highway 5 experiences essentially the same climate as that within the existing Lodi viticultural area. The pronounced seabreezes from the San Francisco Bay and Sacramento Delta provide nearly identical conditions to those found within the original western boundary. There is no discernible difference in average growing season, monthly mean temperature, or rainfall throughout this addition from that which exists in the current Lodi viticultural area.

According to Mr. Newman, areas immediately to the south and southwest of the proposed addition, however, have a distinctly different climate due to the sharp drop-off of the Delta winds and other terrain effects. Lower humidity levels associated with a greater distance from the moist winds produce cooler overnight temperatures and warmer "rain-show" effect of the Diablo mountain range. The climate of the proposed western addition is also distinctively different from the more moist Delta region, to the west of the proposed boundary, which experiences cooler summers, and far more frequent summertime fog.

Mr. Newman claims that records indicate that the monthly mean temperature during the growing season for Linden, in the heart of the proposed southern addition, is within approximately two degrees of the readings from Lodi, and well within the range of temperatures throughout the existing viticultural area. He further states that, by contrast, records for Stockton, located in a site less influenced by marine cooling through the narrow Delta gap, show an average nearly five degrees warmer.

According to Mr. Newman, areas just a few miles to the east of the proposed addition, in western Calaveras County, receive significant cold-air drainage from the Sierra Nevada foothills, causing more frequent frost and a shorter growing season. The more upland locations also receive an increase in rainfall associated with the higher elevations.

Mr. Newman stated that rainfall records for this proposed addition show an annual precipitation range of approximately 14 to 18 inches. These totals are consistent with those received within the existing boundaries. He stated that, in sharp contrast, rainfall totals to the south drop off rapidly due to a more arid climate associated with the remainder of the San Joaquin Valley.

In summary, according to Mr. Newman, the climatic evidence clearly supports a modification of both the southern and western boundaries of the Lodi viticulture area to include the proposed additions. All climate factors within these additions are nearly identical to those within the existing appellation. Climate evidence also substantiates that conditions outside the areas to be included are significantly different from the existing Lodi viticultural area and the proposed additions.

Soils

The petition indicates that the soils of the proposed expansion area are substantially similar to those of the existing viticultural area. Mr. Sidney W. Davis of Davis Consulting Earth Scientists, Georgetown, California, states that soils of the Lodi viticultural area derive mainly from mixed mineral alluvium, products of weathering, erosion and deposition along the western slope of the Sierra Nevada. Source materials are varied, consisting of Mesozoic igneous, Paleozoic and Jurassic metamorphics, and Teritary-age volcanic lithology outcropping along the foothills. Older alluvium nests along toe slopes of the foothills on the Great Valley's east side, descending in elevation and age, westward, to below sea level at the Sacramento-San Joaquin Delta interface.

Mr. Davis claims that paleoclimatic fluctuations over the past two million years caused glaciers to advance in the Sierra Nevada, periodically lowering regional base level (sea level) by several hundred feet, which prompted incision on the major drainages. Interruptions of warm, dry periods resulted in glacial melt, thus releasing water and sediment for valley filling. These cyclical events, each lasting many thousands of years, continued throughout the Pleistocene Epoch, and in conjunction with regional tectonic uplift, had an effect of wearing down and fragmenting older terraces by deep incision along major drainages of the Consumnes River, Dry Creek, Mokelumne River, and the Calaveras Rivers. Downcutting on the major rivers and streams, punctuated by periods of aggradation, in conjunction with regional uplift of the Sierra Nevada, caused younger deposits to inset along flood plains at relatively lower geomorphic position, leaving relatively older alluvial surfaces stranded at higher elevation. Transition periods of relative stability between major events allowed the soil forming factors of climate biota, slop-aspect parent materials and time of exposure to develop and sculpt the landforms now present. Very young soils with little development characteristics, Holoene-age deposits, and histosols (organic soils) are present along the active flood plains of streams and perimeter of the Sacramento-San Joaquin Delta.

According to Mr. Davis, subsequent to the latest Sierra glaciation and rise of sea level, the present-day Sacramento-San Joaquin Delta with its associated peaty soils formed sometime around 5,000 years ago, when sea level finally reached its present elevation (Mean Sea Level—00 Feet). He further stated that, around the turn of the 20th Century, the banks of coalescing rivers, channels and sloughs within the Delta region were bermed to create a system of man-made levees. "Islands" of peat soils within the levees were created at or below Mean Sea Level by installation of a broad grid system of open ditches, pipes and

pumps for lowering of the water table to facilitate agricultural production. Exposure of the peat soils to the atmosphere subsequent to draining has induced rapid oxidation and subsidence within the Delta region, ever since.

Mr. Davis provided an abbreviated description of soils within the Lodi viticultural area, utilizing information from the USDA Soil Conservation Service's Generalized Soil Map for Sacramento and San Joaquin counties. He stated that soil associations are presented as most representative of soil mapping units characteristic of broader geomorphic units. According to the petition, these soils share properties distinctive to the Lodi viticultural area with regard to viticultural use and management under the present-day climatic regime.

Mineral Soils of the Current Lodi Viticultural Area

Mr. Davis stated that, between the two published soil surveys for Sacramento and San Joaquin Counties, there are twenty-two soil map unit associations identified in the existing Lodi Viticultural Area. *All twenty-two soil mapping units are identified in the proposed expansion area.* He stated that no other soil association mapping units are proposed for the expansion areas. There may be small isolated areas of organic soils along the Mean Sea Level margin that protrude into the proposed expansion area, but these occurrences are minimal and necessary to exact a reasonable map boundary line.

According to Mr. Davis, to avoid redundancy between the two soil survey reports for Sacramento and San Joaquin Counties, the major soil associations have been combined in the following groups and are used for the current, proposed western and southern expansion viticultural areas:

Natural Levees and Low Flood Plains Soils

Peliter-Egbert-Sailboat: Very deep mineral soils with high organic matter content. They are partially drained, moderately fine textured and moderately alkaline. These reside near the confluence of the Consumnes and Mokelumne rivers.

Merritt-Grangeville-Columbia-Vina-Coyotecreek: Nearly level, very deep and from poorly drained to moderately well drained. Textures range from moderately coarse to moderately fine. These soils are easy to manage with moderate permeability and moderately high to high waterholding capacity, moderately alkaline.

Basins and Basin Rim Soils

Jacktone-Hollenbeck-Stockton: Basin soils, somewhat poorly drained and moderately well drained, fine textured soils that are moderately deep and deep to a cemented hardpan. Most areas have been artificially drained and are moderately alkaline.

Devries-Rioblancho-Guard: Basin rim soils of moderately fine texture to moderately coarse texture. Moderately deep to cemented hardpan. Mildly to moderately alkaline.

Interfan Basins and Alluvial Fans, Low Fan Terraces and Stream Soils

Archerdale-Cogna-Finrod: Moderately well drained and well drained, medium textured to moderately fine textured soil that are deep to hardpan, or very deep on low terraces. Neutral to mildly alkaline.

Tokay-Acampo: Moderately well-to well-drained, moderately coarse to medium textured that are deep to cemented hardpan or are very deep on low fan terraces. Mildly alkaline to slightly acid.

Nearly Level to Undulating Soils on Low Terraces

Madera-San Joaquin-Burella: Moderately well-and well drained, moderately coarse to medium textured that are moderately deep or deep to cemented hardpan. Slightly acid.

Nearly Level to Steep Soils on Dissected Terraces, Fan Terrace, High Terraces and Hills

Cometa-San Joaquin-Rocklin: Moderately well drained, moderately coarse textured soils that are moderately deep to weakly cemented sediment, or a cemented hardpan on dissected terraces. Slightly to moderately acid.

Pentz-Pardee-Keyes-Hadslkeville-Mokelumne: Moderately well drained and well drained, moderately coarse texture and gravelly medium textured soils that are shallow to sandstone, conglomerate, or cemented hardpan on hills and high terraces. Moderately acid.

Redding-Redbluff-Yellowlark: Moderately well drained, gravelly medium textured soils that are moderately deep and deep to a cemented hardpan, mainly on fan terraces and high terraces. Moderately acid.

Undulating to Hilly Soils on Low Foothills

Auburn-Whiterock-Argonaut: Somewhat excessively and well-drained soils moderately coarse to moderately fine textured that are very shallow to moderately deep. Moderately acid.

According to Mr. Davis, soils below Mean Sea Level have been, as much as possible, differentiated and excluded from the proposed Lodi viticultural area expansion due to a differing moisture control regime, geomorphic position and relative organic matter content.

Mr. Davis stated that, with respect to viticultural use and management, water tables north of Walnut Grove Road within the proposed expansion area are lower (deeper) than further south. Vine moisture control is critical to wine grape quality prior to harvest. Ripening varies among grape varieties that are usually segregated into individual blocks, fields or specific moisture control systems that are regulated by irrigation or soil profile drainage, or both. Soils above Mean Sea Level have deep drainage systems, and allow for water table management in the root zone and precise moisture control. The proposed area to the west is at the zero elevation level.

Mr. Davis asserts that most soils below elevation 00 are mainly characterized as Histosols, meaning that they contain upwards of 20 percent organic matter, are moderately to strongly acidic, and represent a unique and different geomorphological province than the mineral soils above Mean Sea Level to the east. The richness of oxidizing organic matter in the way of available nutrients to a crop during the growing season is significantly higher than contributions from oxidizing mineral soils, on an annual basis. Complex chemical reactions separate the peaty soils below Mean Sea Level from soils derived from mineral parent materials from a use and management standpoint.

Mr. Davis' Summary and Conclusions

Mr. Davis summarized his comments by stating the proposed changes to the Lodi viticultural area are consistent with geomorphic and soil mapping units found within the existing boundaries. Mr. Davis stressed that all the soils in the proposed expansion areas are mapped within the existing Lodi viticultural area. Only soils found in the existing viticultural area are proposed for the expansion area, with the exception of some limited and isolated inclusions of peaty soils along the diffuse natural western boundary. A line conforming to roads, and elevation contours, roughly at the Mean Sea Level mark, is intended to separate the mineral soil from the peats on the west. County lines, roads and natural features define the remaining boundaries.

Proposed Boundaries

The boundaries of the proposed viticultural area, as expanded, are as specified in the proposed regulation.

Public Participation—Written Comments

The petitioner presents evidence of boundaries and of geographical features relating to soils. ATF is interested in comments relating to whether the geographical features, such as elevation, exposure, or other physical characteristics of the proposed expansion area are more similar to the existing Lodi viticultural or to the land outside of the proposed expansion area.

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted electronically using ATF's web site. You may comment on this proposed notice by using the form provided through ATF's web site. You can reach this notice and the comment form through the address *http://www.atf.treas.gov/core/alcohol/rules/rules.htm* or by making the following choices at ATF's web site: (1) select "Core Areas" tab; (2) select "Alcohol" tab; (3) select "Regulations" tab; and (4) select "notice of proposed rulemaking (alcohol)" line.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The expansion of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather a further identification of an area that is distinct from surrounding areas. ATF believes that the expansion of a viticultural area merely allows wineries to more accurately describe the origin of their wines to consumers. Also it helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's efforts and consumer acceptance of wine from that area. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Drafting Information. The principal author of this document is Joyce A. Drake, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Par. 2 Section 9.107 is amended by revising paragraphs (b) and (c) to read as follows:

§9.107 Lodi

(a) * * *

(b) Approved maps. The appropriate maps for determining the boundaries of the Lodi viticultural area are 23 U.S.G.S. 7.5 minute series maps and are titled as follows:

1. "Valley Springs SW, Calif." (1962)
2. "Farmington, Calif." (1968, photo revised 1987)
3. "Peters, Calif." (1952, photo revised 1968, minor revision, 1994)
4. "Linden, Calif." (1968, minor revision 1993)
5. "Stockton East, Calif." (1968, photo revised 1987)
6. "Waterloo, Calif." (1968, photo inspected 1978)
7. "Lodi South, Calif." (1968, photo revised 1976)
8. "Terminous, Calif." (1978, minor revision 1993)
9. "Thornton, Calif." (1978)
10. "Bruceville, Calif." (1968, photo revised 1980)
11. "Florin, Calif." (1968, photo revised 1980)
12. "Elk Grove, Calif." (1968, photo revised 1979)
13. "Sloughhouse, Calif." (1968, photo revised 1980, minor revision 1993)
14. "Buffalo Creek, Calif." (1967, photo revised 1980)
15. "Folsom SE, Calif." (1954, photo revised 1980)
16. "Carbondale, Calif." (1968, photo revised 1980, minor revision 1993)
17. "Goose Creek, Calif." (1968, photo revised 1980, minor revision 1993)
18. "Clements, Calif." (1968, minor revision 1993)
19. "Wallace, Calif." (1962)
20. "Lodi North, Calif." (1968, photo revised 1976)
21. "Galt, Calif." (1968, photo revised 1980)
22. "Clay, Calif." (1968, photo revised 1980, minor revision 1993)
23. "Lockeford, Calif." (1968, photo revised 1979, minor revision 1993)

(c) Boundaries. The Lodi viticultural area is located in California in the counties of San Joaquin and Sacramento.

1. The beginning point is located in the southeast corner of the viticultural area, where the Calaveral River intersects the eastern boundary of San Joaquin County ("Valley Springs SW" U.S.G.S. map);
2. Thence south along the common boundary between San Joaquin County and Stanislaus County to Highway 4 (beginning in "Valley Springs SW" map and ending in "Farmington" map);
3. Thence west to Waverly Road, then south to Highway 4, then west again along Highway 4 to the point of intersection with Jack Tone Road (beginning in Valley Springs SW" map passing through "Peters" map and ending in "Stockton East" map);
4. Thence north along Jack Tone Road to the point of intersection with Eightmile Road (beginning in "Stockton East" map and ending in "Waterloo" map);
5. Thence west along Eightmile Road to the point of intersection with Sea

Level (beginning in "Waterloo" map, passing through "Lodi South" map and ending in "Terminous" map);
6. Thence north northwest along Sea Level elevation to the point where it reaches the unnamed extension of White Slough ("Terminous" map);
7. Thence east along the unnamed extension of White Slough to the point where it forks ("Terminous"map);
8. Thence northwest and north along the northern fork of the unnamed extension of White Slough to its termination ("Terminous" map);
9. Thence due west in a straight line to Guard Road ("Terminous" map);
10. Thence north along Guard Road to the point of intersection with Victor Road (beginning in "Terminous" map and ending in "Thornton" map);
11. Thence north northwest in a straight line to the pumping station of the north bank of Hog Slough ("Thornton" map);
12. Thence due north along the unnamed canal, crossing Beaver Slough and continuing due north along the unnamed road to the point where it intersects Walnut Grove Road at Four Corners ("Thornton" map);
13. Thence west along Walnut Grove Road to the point where it intersects South Mokelumne River ("Thornton" map);
14. Thence north along South Mokelumne River to the point where Mokelumne River divides into North and South forks ("Thornton" map);
15. Thence north and east along Mokelumne River to the point where it intersects Interstate Highway 5 (beginning in "Thornton" map and ending in "Bruceville" map);
16. Thence northwest along Interstate Highway 5 to its intersection with an unnamed road (known locally as Hood-Franklin Road) (beginning in the "Bruceville" map and ending in the "Florin" map);
17. Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard ("Florin" map);
18. Thence northeast along the Franklin Boulevard to its meeting point with the section line running due east and its connection with the western end of Sheldon Road ("Florin" map);
19. Thence due east along the section line connecting to the western end of Sheldon Road ("Florin" map);
20. Thence due east along Sheldon Road to its intersection with the Central California Traction Co. Railroad (beginning in "Florin" map and ending in "Elk Grove" map);
21. Thence southeast along the Central California Tracton Co. Railroads to its point of intersection with Grant Line Road ("Elk Grove" map);
22. Thence northeast along Grant Line Road to the point of intersection with California State Highway 16 (beginning in "Elk Grove" map, passing through "Sloughhouse" map and ending in "Buffalo Creek" map);
23. Thence southeast along California State Highway 16 to the point of intersection with Deer Creek (beginning in "Buffalo Creek" map and ending in "Sloughhouse" map);
24. Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County (beginning in "Sloughhouse map and ending in "Folsom SE" map).
25. Thence southeast along the eastern boundary of Sacramento county and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, to the point of beginning (beginning in "Folsom SE" map, passing through "Carbondale", "Goose Creek", "Clements" and "Wallace" maps, and ending in "Valley Springs, SW" map).

Signed: January 27, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–2716 Filed 2–4–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD01–99–050]

RIN 2115–AA97, AA98, AE46

Temporary Regulations: OPSAIL 2000/ International Naval Review 2000 (INR 2000), Port of New York/New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull for OPSAIL 2000/INR 2000 activities. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000/ INR 2000. This action is intended to restrict vessel traffic in portions of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull.

DATES: Comments and related material must reach the Coast Guard on or before March 23, 2000.

ADDRESSES: You may mail comments and related material to the Waterways Oversight Branch (CGD01–99–050), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 203 at the same address. Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 205, the Waterways Oversight Branch of Coast Guard Activities New York, between 8 a.m., e.s.t. and 3 p.m., e.s.t. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–99–050), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch of Coast Guard Activities New York at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary regulations are for OPSAIL 2000/INR 2000 events held on New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull. These events will be held from July 2—10, 2000. This rule is proposed to provide for the safety of life on navigable waters and to protect the U.S. Navy vessels and Port of New York and New Jersey during these events.

Discussion of Proposed Rule

The U.S. Navy is sponsoring the International Naval Review.

This event will consist of the anchoring of approximately 50 US and foreign naval vessels in line between the Verrazano-Narrows Bridge and the George Washington Bridge. A high level U.S. dignitary will transit aboard a U.S. Navy vessel along this line as a ceremonial review. Operation Sail, Inc. is sponsoring the seventh OPSAIL Parade of Tall Ships, as well as a fireworks display co-sponsored by Macy's Inc. Operation Sail will consist of a parade of sailing vessels from the Verrazano-Narrows Bridge north past a reviewing stand aboard the USS JOHN F. KENNEDY (CV–67) anchored in Federal Anchorage 21B in Upper New York Bay. This parade will continue north to the George Washington Bridge where these vessels will turn south and go to berth throughout the Port of New York and New Jersey. These events are scheduled to take place on July 4, 2000, in the Port of New York/New Jersey, on the waters of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull. The Coast Guard expects a minimum of 40,000 spectator craft for these events. The proposed regulations create temporary anchorage regulations, vessel movement controls, and two security zones. The regulations will be in effect at various times in the Port of New York and New Jersey during the period June 29, 2000 through July 5, 2000. The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish two regulated areas in New York Harbor that will be in effect from July 3—5, 2000. These two proposed regulated areas are needed to protect the maritime public and participating vessels from possible hazards to navigation associated with; an International Naval Review conducted on the Hudson River and New York Harbor Upper Bay, a Parade of Tall Ships transiting the waters of Sandy Hook Bay, New York Harbor, and the Hudson River in close proximity; fireworks fired from 18—21 barges on the Hudson and East Rivers and in Upper New York Bay; and a large number of naval vessels, Tall Ships, and spectator craft anchored in close proximity throughout the duration of these events. These regulated areas include vessel anchoring and operating restrictions.

Regulated Area A covers all waters of New York Harbor Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00′00″ W (NAD 1983) between Coney Island, New York, and Navesink, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W (NAD 1983) between Fort Wadsworth, Staten Island, and Leonardo, New Jersey and all waters of Ambrose Channel shoreward of buoys 1 and 2. Please see Chartlet I, depicting Regulated Area A, included with this NPRM for the convenience of the reader. This proposed area is to be used as a staging area for vessels participating in the Parade of Tall Ships. This proposed regulated area is effective from 6 a.m., e.s.t. July 3, until 4 p.m., e.s.t. on July 4, 2000.

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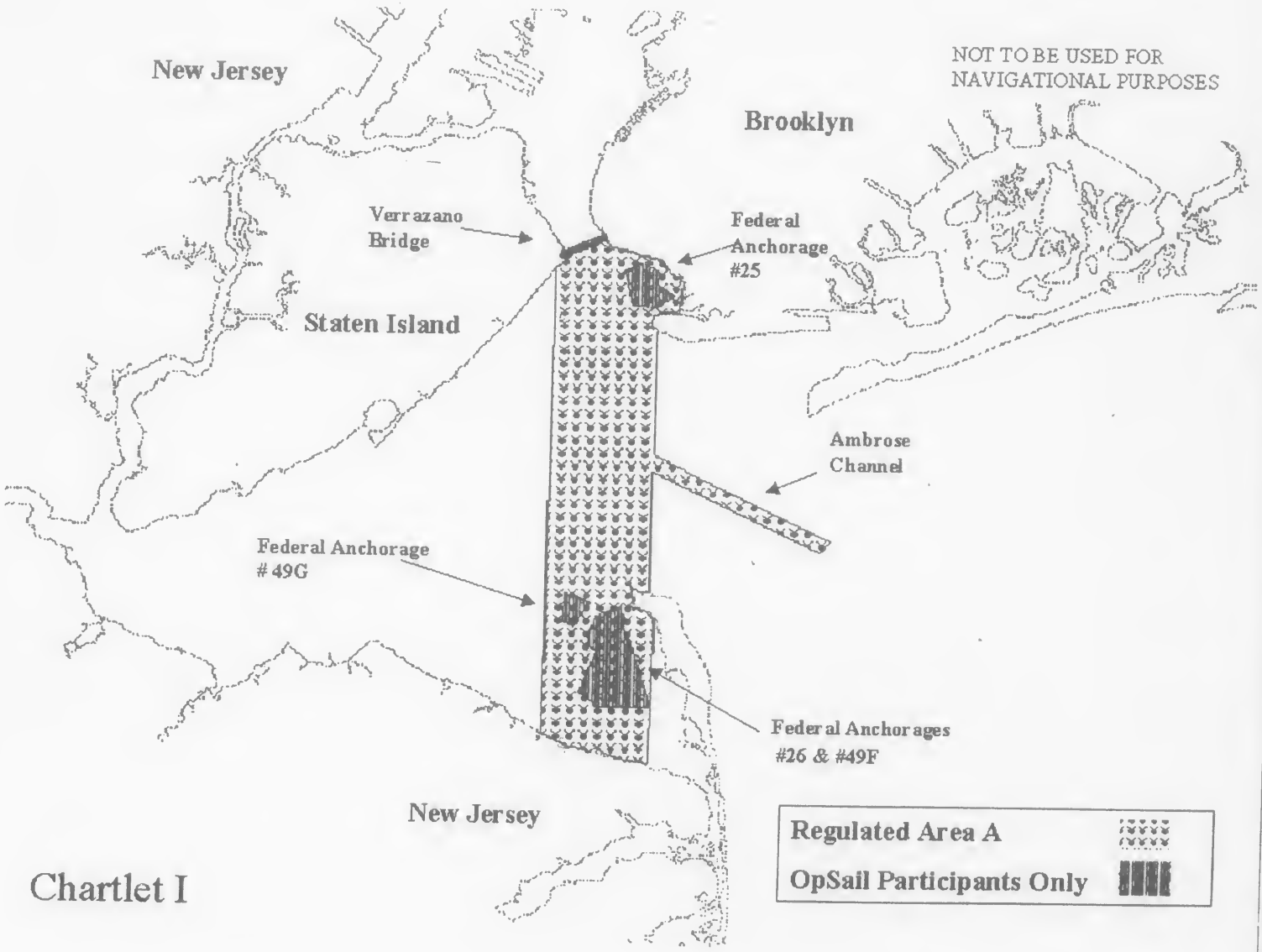
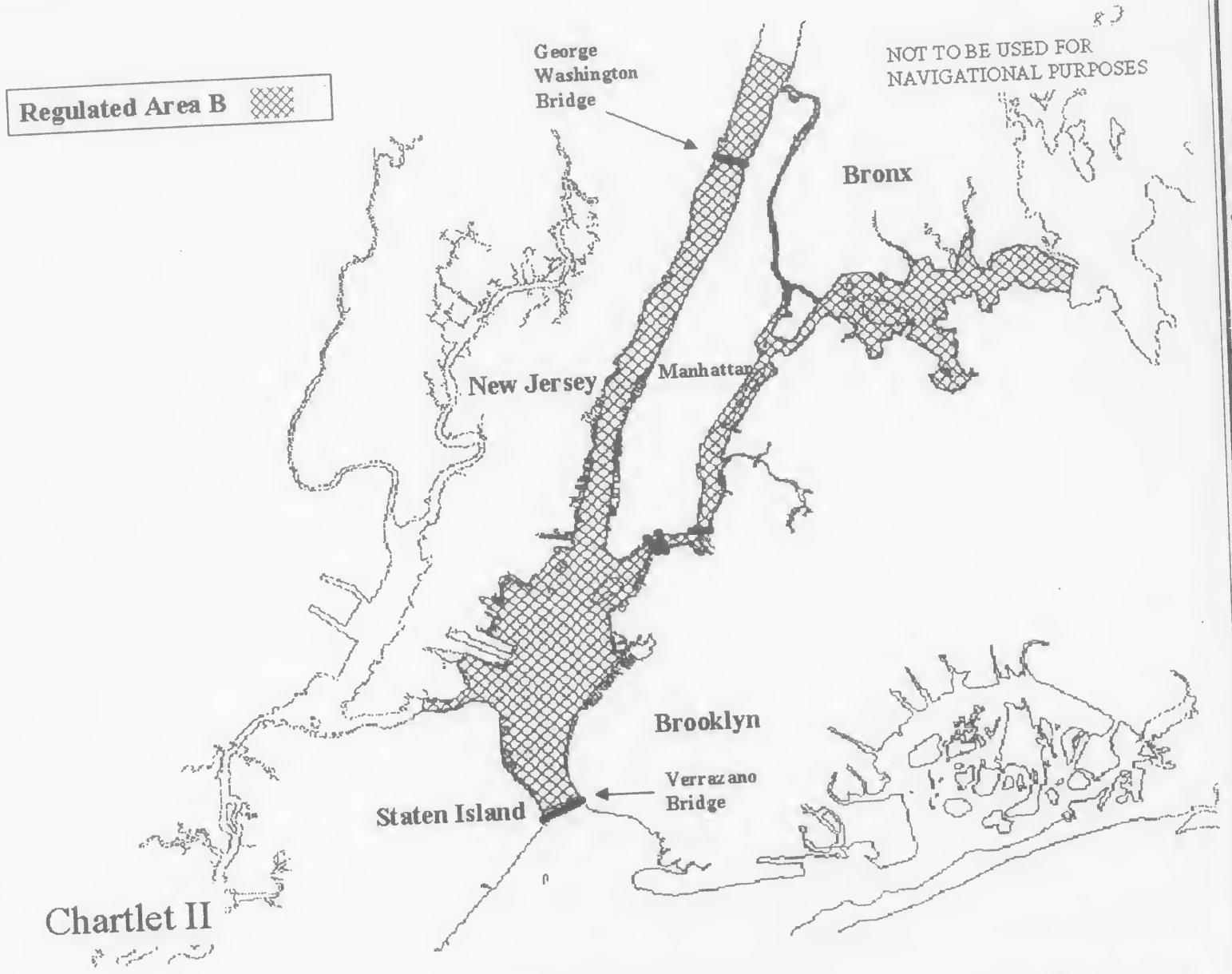

New Jersey
NOT TO BE USED FOR NAVIGATIONAL PURPOSES
Brooklyn
Verrazano Bridge
Federal Anchorage #25
Staten Island
Ambrose Channel
Federal Anchorage #49G
Federal Anchorages #26 & #49F
New Jersey
Regulated Area A
OpSail Participants Only

Chartlet I

Regulated Area B covers all waters of New York Harbor, Upper Bay, the Hudson, Harlem, and East Rivers, and the Kill Van Kull within the following boundaries: south of 40°52′39″ N (NAD 1983) on the Hudson River at Spuyten Duyvil Creek; west of the Throgsneck Bridge on the East River; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W (NAD 1983) between New Brighton, Staten Island, and Constable Hook, New Jersey, in the Kill Van Kull. Please see Charlet II , depicting Regulated Area B, included with this NPRM for the convenience of the reader. This proposed area is for the International Naval Review, the Parade of Tall Ships, and the July 4th fireworks display. This proposed regulated area is effective from 10:00 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.


Regulated Area B
George Washington Bridge
NOT TO BE USED FOR NAVIGATIONAL PURPOSES
Bronx
New Jersey
Manhattan
Brooklyn
Verrazano Bridge
Staten Island
Chartlet II

Spectator vessels transiting Regulated Area A or B must do so at no wake speed or at speeds not to exceed 10 knots, whichever is less. No vessels other than OPSAIL 2000/INR 2000 vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the Anchorage Channel or Hudson River in regulated Area B unless specifically authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative. No vessel may anchor in the Anchorage Channel or Hudson River outside of the designated spectator anchorages in Regulated Area B at any time without authorization. The operation of seaplanes, including taxiing, landing, and taking off, is prohibited in Area B on July 3–4, 2000, without prior written authorization from the Captain of the Port. Ferry services may operate in Area B on July 3 and 5, 2000. On July 4, 2000 only those ferry services with prior written authorization from the Coast Guard Captain of the Port will be authorized to operate in this area.

No vessel, other than OPSAIL 2000/INR 2000 vessels, their assisting tugs, and enforcement vessels, is permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 7 a.m., e.s.t. July 4, 2000 until the end of the Parade of Sail. Vessels which must transit to or from the East River may only do so by using Buttermilk Channel unless otherwise authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative.

Proposed Regulated Area A contains three anchorage grounds for use by OPSAIL 2000/INR 2000 vessels only and it will also serve as a staging area for the vessels participating in the Parade of Sail. Proposed Regulated Area B contains anchorage grounds for OPSAIL 2000/INR 2000 vessels and spectator craft. It contains the International Naval Review of Ships on the Hudson River and New York Harbor's Upper Bay, from the Verrazano-Narrows Bridge to the George Washington Bridge (river mile 11.0). The International Naval Review will be conducted on the morning of July 4, 2000 and consists of a column of approximately 50 International Naval Ships anchored in the Hudson River and New York Harbor's Upper Bay along the western side of the Anchorage Channel. The U.S. Navy Review Ship will transit south along this column from the George Washington Bridge to the Verrazano-Bridge and conduct a review of all the participating naval ships. After the INR, approximately 300 vessels will participate in the Parade of Sailing Vessels which will take place in Area B between the Verrazano-Narrows Bridge and the George Washington Bridge (river mile 11.0) on the Hudson River. Additionally, Area B will contain 18–21 fireworks barges being used for the July 4th fireworks display. Fireworks barges will be located in the Hudson River between the Holland Tunnel Ventilators and West 65th Street in Manhattan, in the East River between the southern tip of Roosevelt Island and The Battery, and in the Anchorage Channel north of the Verrazano-Narrows Bridge.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL 2000/INR 2000 ships and spectator craft. Some current Anchorage Regulations in 33 CFR 110.155 will be temporarily suspended by this regulation and new Anchorage Grounds and regulations will be temporarily established. Chartlets I, III, and IV illustrate the proposed anchorage grounds and are included for the convenience of the reader.

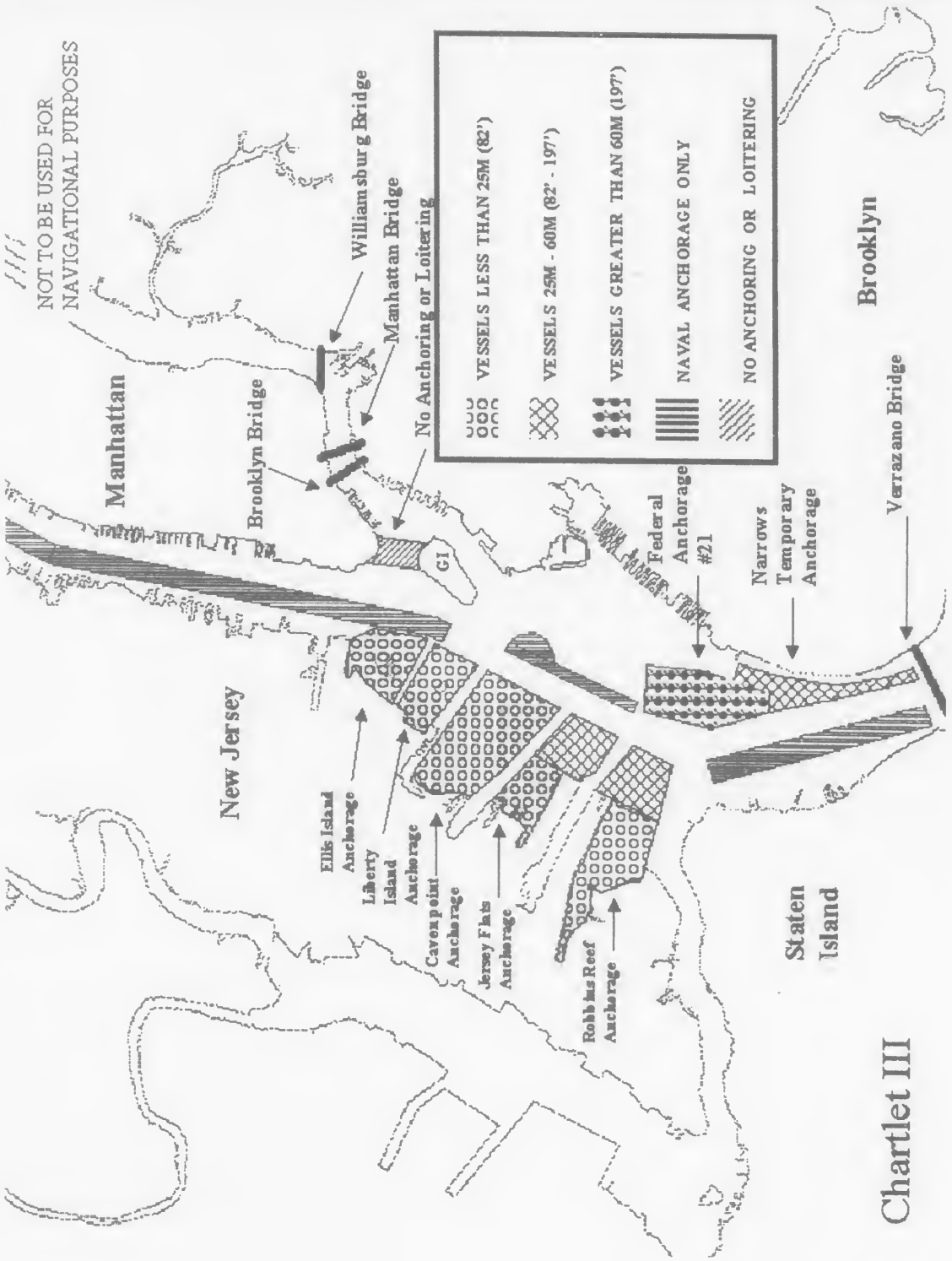
The proposed anchorage regulations designate selected current or temporarily established Anchorage Grounds for spectator or OPSAIL 2000/INR 2000 participant vessel use only. They restrict all other vessels from using these Anchorage Grounds during a portion of the OPSAIL 2000/INR 2000 event. The Anchorage Grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL/INR vessels and to protect boaters and spectator vessels from the hazards associated with the International Naval Review and the Parade of Tall Ships.

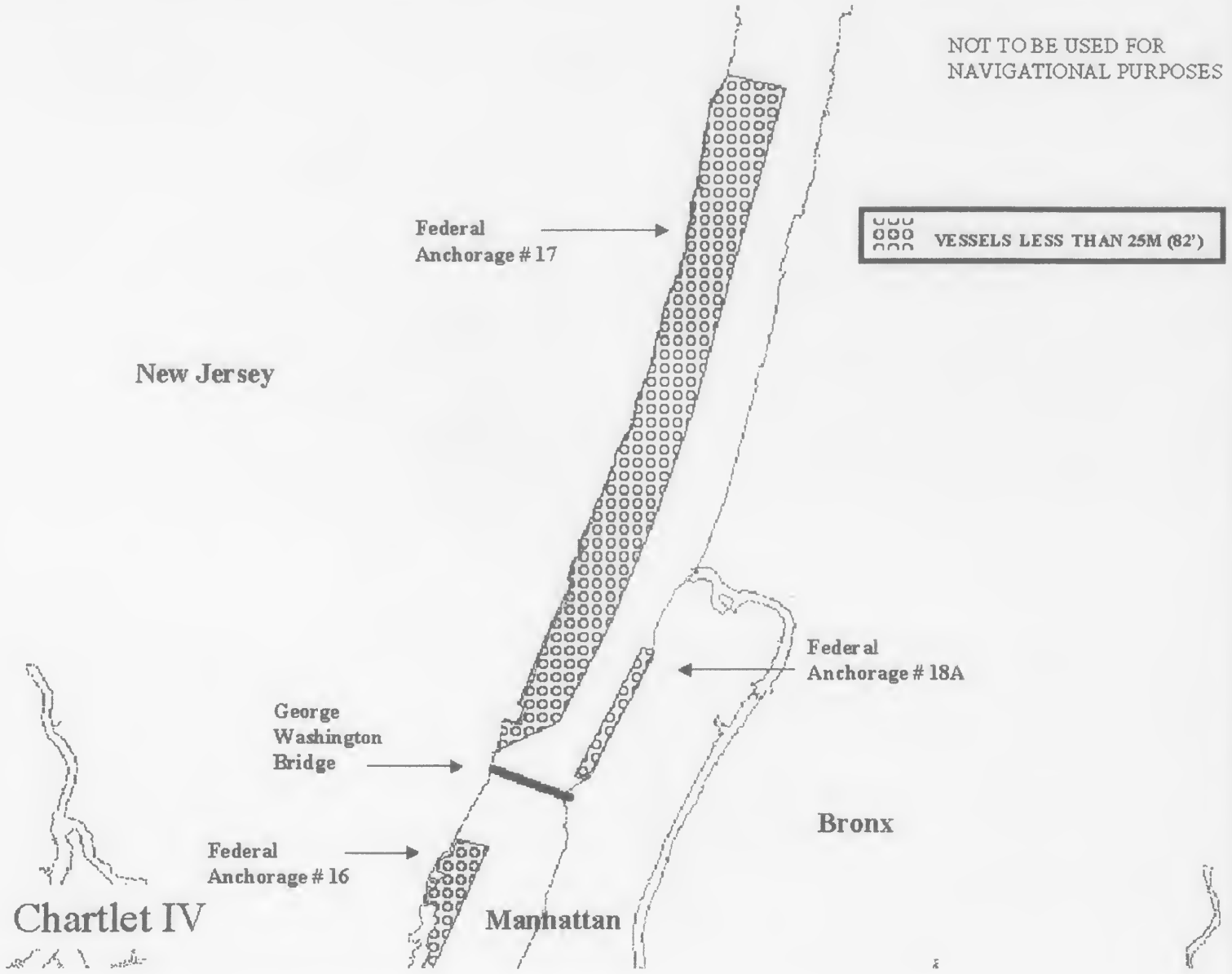
The Coast Guard proposes to designate Anchorage Grounds 16, 17, and 18–A in the Hudson River in the vicinity of the George Washington Bridge (river mile 11.0); and the temporarily established Liberty Island Anchorage, Ellis Island Anchorage, Caven Point Anchorage, Jersey Flats Anchorage and Robbins Reef Anchorage in New York Harbor's Upper Bay, and a temporary Anchorage Ground from north of the Verrazano-Narrows Bridge to Owls Head Park along the Brooklyn shoreline exclusively for spectator vessel use from 12 noon on June 29, 2000, until 12 noon on July 5, 2000.

The Coast Guard also proposes to designate Anchorage Grounds 21–B, 23–A, 23–B, and 24 in New York Harbor's Upper Bay for OPSAIL 2000/INR 2000 participant vessels. These regulations are effective from 3 a.m., e.s.t. July 1, 2000, through 6 p.m., e.s.t. July 5, 2000. Other vessels may be authorized to use these anchorages on July 1 and 2, 2000 as determined by the Captain of the Port, New York.

Additionally, the Coast Guard proposes to designate Anchorage Ground 25 and a temporarily established Anchorage Ground covering portions of Anchorage Grounds 26, 49–F and 49G in Sandy Hook Bay for OPSAIL 2000/INR 2000 participant vessels. These proposed regulations are effective from 6 a.m., e.s.t. July 2, 2000, through 4 p.m., e.s.t. July 4, 2000.

The eastern portions of the Jersey Flats and Robbins Reef Anchorages and the Narrows Temporary Anchorage Ground are for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length. Anchorage 21–C is for vessels greater than 60 meters (197 feet). Positioning within these three anchorages will be controlled by the Captain of the Port, New York. Persons desiring to use these anchorages must apply for a permit as outlined in the public notice titled Lottery for Spectator Craft Viewing Anchorages for OPSAIL 2000/International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).


NOT TO BE USED FOR NAVIGATIONAL PURPOSES
Williamsburg Bridge
Manhattan Bridge
Brooklyn Bridge
No Anchoring or Loitering
Manhattan
Brooklyn
VESSELS LESS THAN 25M (82')
VESSELS 25M - 60M (82' - 197')
VESSELS GREATER THAN 60M (197')
NAVAL ANCHORAGE ONLY
NO ANCHORING OR LOITERING
G1
Federal Anchorage #21
Narrows Temporary Anchorage
Verrazano Bridge
New Jersey
Ellis Island Anchorage
Liberty Island Anchorage
Caven point Anchorage
Jersey Flats Anchorage
Robbins Reef Anchorage
Staten Island
Chartlet III


NOT TO BE USED FOR
NAVIGATIONAL PURPOSES
VESSELS LESS THAN 25M (82')
Federal
Anchorage # 17
New Jersey
Federal
Anchorage # 18A
George
Washington
Bridge
Bronx
Federal
Anchorage # 16
Chartlet IV
Manhattan

Security Zones

The Coast Guard proposes to establish a moving security zone for all waters within 500 yards of the Review Ship for the International Naval Review from 7 a.m., e.s.t. until 11 a.m., e.s.t. on July 4, 2000. The Review Ship will be the U.S. Navy vessel that is anchored the furthest north in the Hudson River at 7 a.m., e.s.t. on July 4, 2000. This ship will get underway and transit down the Hudson River and Upper New York Bay between the George Washington Bridge (river mile 11.0) and the Verrazano-Narrows Bridge. The Review Ship will be easily identifiable during its transit because it will be the only large U.S. Navy vessel that is underway at this time in the Port of New York, and it will be escorted by numerous U.S. Coast Guard small boats. A second security zone is proposed for all waters within 500 yards of the USS JOHN F. KENNEDY (CV–67), from 10 a.m., e.s.t. until 5 p.m., e.s.t. on July 4, 2000 while in Anchorage 21–B and while being used as the reviewing stand for the Parade of Sailing Vessels. These security zones are needed to protect the Port of New York and New Jersey and U.S. Navy vessels during the International Naval Review and Parade of Sailing Vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of New York Harbor, Sandy Hook Bay, the Hudson and East Rivers, and the Kill Van Kull during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, New York Harbor Operations Committee meetings, and New York area newspapers, so mariners can adjust their plans accordingly. At no time will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to those areas may be accomplished using Raritan Bay, Arthur Kill, Kill Van Kull, and Newark Bay as an alternate route. This will allow the majority of the maritime industrial activity in the Port of New York/New Jersey to continue, relatively unaffected. Similar regulated areas were established for the 1986 and 1992 OPSAIL events. Based upon the Coast Guard's experiences learned from these previous events of a similar magnitude, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of Lower and Upper New York Bay and the Hudson and East Rivers during various times from July 2–10, 2000. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Although these regulations would apply to a substantial portion of the Port of New York/New Jersey, designated areas for viewing the Parade of Sailing Vessels and the Fourth of July Fireworks are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant J. Lopez, Coast Guard Activities New York, Waterways Oversight Branch at (718) 354–4193.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of

Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34 (f, g, and h), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. These temporary regulations establish special local regulations, anchorage grounds, and security zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.T01–050 to read as follows:

§ 100.T01–050 OPSAIL 2000/ International Naval Review (INR) 2000, Port of New York/ New Jersey.

(a) Regulated areas. (1) Regulated Area A—(i) *Location.* All waters of New York Harbor, Lower Bay and Sandy Hook Bay within the following boundaries: south of the Verrazano-Narrows Bridge; west of a line drawn shore to shore along 074°00′00″ W (NAD 1983) between Coney Island, New York, and Navesink, New Jersey; and east of a line drawn shore to shore along 074°03′12″ W (NAD 1983) between Fort Wadsworth, Staten Island, and Leonardo, New Jersey, and all waters of Ambrose Channel shoreward of buoys 1 and 2.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 6 a.m., e.s.t. July 3, until 4 p.m., e.s.t. on July 4, 2000.

(2) Regulated Area B.—(i) *Location.* All waters of New York Harbor, Upper Bay, the Hudson and East Rivers, and the Kill Van Kull within the following boundaries: south of 40°52′39″ N (NAD 1983) on the Hudson River at Spuyten Duyvil Creek; west of the Throgsneck Bridge on the East River; north of the Verrazano-Narrows Bridge; and east of a line drawn from shore to shore along 074°05′15″ W (NAD 1983) between New Brighton, Staten Island, and Constable Hook, New Jersey, in the Kill Van Kull.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 10 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

(b) *Special local regulations.* (1) No vessel except OPSAIL 2000/INR 2000 participating vessels and their assisting tugs, spectator vessels, and those vessels exempt from the regulations in this section, may enter or navigate within Areas A and B, unless specifically authorized by the Coast Guard Captain of the Port, New York, or his on-scene representative.

(2) Vessels transiting Area B must do so at no wake speed or at speeds not to exceed 10 knots, whichever is less.

(3) Notwithstanding paragraph (b)(1) of this section, no vessel, other than OPSAIL 2000/INR 2000 Vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the main shipping channels in Area B unless they are specifically authorized to do so by Coast Guard Captain of the Port, New York, or his on-scene representative. No vessel in Area B is permitted to cross through the parade of sail, cross within 500 yards of the lead or last vessel in the parade of sail, or maneuver alongside within 100 yards of any OPSAIL 2000/INR 2000 Vessel unless authorized to do so by the Captain of the Port.

(4) No vessel is permitted to anchor in the Anchorage Channel or the Hudson River outside of the designated anchorages at any time without authorization. Vessels which need to anchor to maintain position will only do so in designated anchorage areas.

(5) No vessel, other than OPSAIL 2000/INR 2000 Vessels, their assisting tugs, and enforcement vessels, is permitted to transit the waters between Governors Island and The Battery in southern Manhattan from 7 a.m., e.s.t. July 4, 2000 until the end of the Parade of Sailing Vessels. Vessels which must transit to or from the East River may only do so by using Buttermilk Channel, unless otherwise authorized by the Coast Guard Captain of the Port, New York, or his designated on-scene representative.

(6) Ferry services may operate in Area B on July 3 and 5, 2000. On July 4, 2000 only those with prior written authorization from the Coast Guard Captain of the Port will be authorized to operate in this area.

(7) The operation of seaplanes, including taxiing, landing, and taking off, is prohibited in Area B on July 3–4, 2000, without prior written authorization from the Captain of the Port.

(8) All spectator vessels must maintain their position in the designated spectator craft anchorages during the fireworks display on July 4th scheduled from 9 p.m., e.s.t. until 10:45 p.m., e.s.t.

(c) *Effective period.* This section is effective from 6 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Effective June 29, 2000 through July 5, 2000, § 110.155 is amended as follows:

a. Add introductory text to the beginning of the section;

b. Add new paragraphs (c)(1)(ii), (c)(2)(ii) and (c)(3)(ii);

c. Paragraphs (d)(1) through (5), (d)(7) through (9), (d)(10)(i), (d)(12)(i) and the introductory text of paragraph (d)(16) are suspended and new paragraphs (d)(10)(ii), (d)(11)(iii), (d)(12)(iii) through (iv), (d)(13)(vi), (d)(14)(iv), (d)(15)(iii), and (d)(17) through (20) are added;

d. Add new paragraph (e)(1)(iii);

e. The Note to paragraph (f)(1) is suspended;

f. Paragraphs (m)(2)(i) through (ii) and (m)(3)(i) are suspended and new paragraphs (m)(2)(iii) and (m)(3)(ii) are added;

g. Paragraph (n)(1) is suspended; and

h. Add new paragraph (o).

§ 110.155 Port of New York.

Mariners are cautioned that the areas designated as anchorage grounds in this section have not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. In addition, the anchorages are in areas of substantial currents, and not all anchorages are over good holding ground. Mariners are advised to take

appropriate precautions when using these temporary anchorages. These are not special anchorage areas. Vessels must display anchor lights, as required by the navigation rules.

* * * * *

(c) * * *

(1) * * *

(ii) This anchorage is designated for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis.

(2) * * *

(ii) See paragraph (c)(1)(ii) of this section.

(3) * * *

(ii) See paragraph (c)(1)(ii) of this section.

* * * * *

(d) * * *

(10) * * *

(ii) This anchorage is for OPSAIL 2000 participating vessels only.

(11) * * *

(iii) This anchorage is reserved for OPSAIL 2000/INR 2000 participating vessels. No other vessel may anchor or operate in this area within 100 yards of OPSAIL 2000/INR 2000 participating vessels.

(12) * * *

(iii) This anchorage is for vessels greater than 60 meters (197 feet) in length. Persons desiring to use this anchorage must apply for a permit as outlined in the public notice Lottery for Spectator Craft Viewing Anchorages for OPSAIL 200/International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(iv) This anchorage is available for vessels observing or participating in OPSAIL 2000/INR 2000 festivities and which have been authorized by the Coast Guard Captain of the Port, New York. No vessel may anchor within this area without authorization to do so.

(13) * * *

(vi) See paragraph (d)(12)(iv) of this section.

(14) * * *

(iv) See paragraph (d)(12)(iv) of this section.

(15) * * *

(iii) See paragraph (d)(12)(iv) of this section.

* * * * *

(17) The anchorages in this paragraph are designated for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis.

(i) *Ellis Island Anchorage.* That area bound by the following points: 40°41′55″N, 074°02′56″W; 40°41′29.5″N, 074°02′05″W; 40°41′42″N, 074°02′00.5″W; 40°41′55″N, 074°01′58″W; 40°42′05″N, 074°01′57″W; 40°42′20.5″N, 074°02′06″W (NAD 1983); thence along the shoreline to the point of beginning.

(ii) *Liberty Island Anchorage.* That area bound by the following points: 40°41′30.5″N, 074°03′15.5″W; 40°41′11.5″N, 074°02′44″W; 40°41′34″N, 074°02′26.5″W; 40°41′51.5″N, 074°02′59.5″W (NAD 1983); thence along the shoreline to the point of beginning.

(iii) *Caven Point Anchorage.* That area bound by the following points: 40°40′33″N, 074°03′33″W; 40°40′25″N, 074°03′23″W; 40°40′09.5″N, 074°02′59″W; 40°40′59.5″N, 074°02′26.5″W; 40°41′26″N, 074°03′18″W (NAD 1983); thence along the shoreline and the Caven Point Pier to the point of beginning.

(18) *Jersey Flats Anchorage.* That area bound by the following points: 40°39′57″N, 074°04′00″W; 40°39′50″N, 074°03′56″W; 40°39′35″N, 074°03′22″W; 40°40′02.5″N, 074°03′04″W; 40°40′53″N, 074°04′17″W (NAD 1983); thence along the shoreline to the point of beginning.

(i) The area west of the eastern end of the Global Marine Terminal Pier is for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis. The area east of the eastern end of the Global Marine Terminal Pier is for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length.

(ii) Persons desiring to use this anchorage must apply for a permit as outlined as outlined in the public notice Lottery for Spectator craft Viewing Anchorages for OPSAIL 200/ International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(19) *Robbins Reef Anchorage.* That area bound by the following points: 40°39′19.5″N, 074°05′10″W; 40°39′00″N, 074°03′46″W; 40°39′22″N, 074°03′29″W; 40°39′49.5″N, 074°04′06″W; (NAD 1983); thence along the shoreline to the point of beginning.

(i) The area west of the eastern end of the Military Ocean Terminal Pier is for the exclusive use of spectator vessels less than 25 meters (82 feet) in length on a first come, first served basis. The area east of the eastern end of the Military Ocean Terminal Pier is for vessels between 25 meters (82 feet) and 60 meters (197 feet) in length.

(ii) Persons desiring to use this anchorage must apply for a permit as outlined in the public notice Lottery for Spectator craft Viewing Anchorages for OPSAIL 2000/International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(20) All vessels anchored in the anchorages described in paragraphs (d)(17 through 19) of this section must comply with the requirements in paragraphs (d)(16)(iii through vii) of this section. Any vessel anchored in or intending to anchor in Federal Anchorage 21–A through 21–C, 23–A, 23–B, 24 or 25 must comply with the requirements in paragraphs (d)(16)(i) through (x) of this section.

(e) * * *

(1) * * *

(iii) No vessel other than OPSAIL 2000/INR 2000 Vessels and their designated assist tugs may anchor and/ or approach within 100 yards of any OPSAIL 2000/INR 2000 Vessel navigating or anchored in this area.

* * * * *

(m) * * *

(2) * * *

(iii) Anchorage No. 49–F is reserved for vessels as set out in paragraph (o)(2) of this section.

(3) * * *

(ii) Anchorage No. 49–G is reserved for vessels as set out in paragraph (o)(2) of this section.

* * * * *

(o) Temporary anchorage grounds. (1) *Narrows anchorage:* That area bound by the following points: 40°38′17″ N, 074°02′18.5″W; 40°38′22″N, 074°02′39″W; 40°38′02.5″N, 074°02′47.5″W; 40°37′21.5″N, 074°02′48.5″W; 40°36′31″N, 074°02′34″W; 40°36′36.5″N, 074°02′15.5″W; 40°36′53.5″N, 074°02′28.5″W; 40′37′13″N, 074°02′34″W; 40°37′44″N, 074°02′33″W; thence to the point of beginning at 40°38′17″N, 074°02′18.5″W (NAD 1983).

(i) This anchorage is designated for the exclusive use of spectator vessels between 25 meters (82 feet) and 60 meters (197 feet) in length. Persons desiring to use this anchorage must apply for a permit as outlined in the public notice Lottery for Spectator craft Viewing Anchorages for OPSAIL 2000/ International Naval review 2000 (INR 2000), Port of New York/New Jersey that was published in the **Federal Register** on November 19, 1999 (64 FR 63362).

(ii) *Effective period.* Paragraph (o)(1) of this section is effective from 12 p.m., e.s.t. on July 2, 2000, through 12 noon on July 5, 2000.

(2) *Sandy Hook Bay Anchorage:* That area bound by the following points: 40°28′30″N, 074°01′42″W; 40°27′56″N, 074°01′35″W; 40°27′54″N, 074°01′25″W; 40°26′00″N, 074°00′58″W; 40°26′00″N, 074°02′00″W; 40°26′29″N, 074°02′51″W;

40°27′29″N, 074°02′10″W; 40°27′40″N, 074°02′36″W; 40°28′07″N, 074°02′19″W (NAD 1983); thence along the shoreline to the point of beginning.

(i) This anchorage sets aside Anchorage No. 49–F and a portion of Anchorage No. 26, as described in paragraph (f)(1) of this section, for the exclusive use of OPSAIL 2000/INR 2000 Vessels.

(ii) No vessels other than OPSAIL 2000/INR 2000 naval and Tall Ships, their designated assist tugs, and enforcement vessels may anchor, loiter, or approach within 100 yards of any OPSAIL 2000/INR 2000 Vessel when it is navigating or at anchor in this area.

(iii) *Effective period.* Paragraph (o)(2) of this section is effective from 6 a.m., e.s.t. on July 2, 2000, through 4 p.m., e.s.t. on July 4, 2000.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–050 to read as follows:

§ 165.T01–050 Security Zones: International Naval Review (INR) 2000, Hudson River and Upper New York Bay.

(a) The following areas are established as security zones:

(1) Security zone A.—(i) *Location:* This security zone includes all waters within 500 yards of the U.S. Navy review ship and the zone will move with the review ship as it transits the Hudson Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(ii) [Reserved]

(b) [Reserved]

Dated: January 14, 2000.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–2245 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF EDUCATION

34 CFR 694

Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document reopens the comment period for the proposed regulations for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. On December 21, 1999 we published in the **Federal Register** (64 FR 71551) a notice of proposed rulemaking (NPRM) proposing new regulations for the GEAR UP program. The deadline for comments on the proposed regulations was January 20, 2000. We are reopening the original 30-day comment period for the proposed regulations until February 10, 2000, because the comment period occurred in part over the holiday season.

DATES: We must receive your comments on or before February 10, 2000.

ADDRESSES: All comments concerning the proposed regulations should be addressed to: Rafael Ramirez, Acting Director, GEAR UP, U.S. Department of Education, 1990 K Street, NW., room 6107, Washington, DC 20006. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov. You must include the term GEAR UP in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: David Condon, Telephone: (202) 502–7676. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at any of the following sites:

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number does not apply.)

Program Authority: 20 U.S.C. 404A

Dated: January 31, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–2601 Filed 2–4–00; 8:45 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6532–5]

National Oil and Hazardous Substance Pollution Contingency Plan: National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for Partial Deletion of Moton Elementary School, including Mugrauer Playground (Operable Unit 4) and Groundwater (Operable Unit 5) of the Agriculture Street Landfill Superfund Site from the National Priorities List and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete Moton Elementary School, including Mugrauer Playground (Operable Unit 4) and Groundwater (Operable Unit 5) of the Agriculture Street Landfill Superfund

Site from the National Priorities List (NPL) and requests public comment on this proposed action.

The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, constitutes Appendix B of 40 CFR Part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA, in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that the Operable Units pose no significant threat to public health, welfare, or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: The EPA will accept comments concerning its proposal to delete for thirty (30) days after publication of this document in the **Federal Register** and a newspaper of general circulation.

ADDRESSES: Comments may be mailed to: Ms. Janetta Coats, Community Relations Coordinator, EPA (6SF-PO), 1445 Ross Ave., Dallas, Texas 75202–2733, (214)665–7308 or 1–800–533–3508 (Toll Free).

Information Repositories:
Comprehensive information on the site has been compiled in a public docket which is available for viewing at the Agriculture Street Landfill Superfund Site information repositories:

EPA Region 6, 7th Floor Reception Area, 1445 Ross Avenue, Suite 1000, Dallas, Texas 75202–2733, (214) 665–6548, Mon.–Fri. 8 a.m. to 4 p.m.
Louisiana Department of Environmental Quality, Inactive and Abandoned Sites Division, 7290 Bluebonnet Road, Baton Rouge, Louisiana 70809, (504) 765–0487, Mon.—Fri. 8 a.m. to 4 p.m.
Agriculture Street Landfill Site, Community Outreach Office, 3221 Press Street, New Orleans, Louisiana 70126, (504) 944–6445, Mon. 12 noon to 6 p.m., Tues., Thurs., and Fri. 3 to 6 p.m., Wed. 10 a.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Ursula R. Lennox, Remedial Project Manager, EPA (6SF–LP), 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6743 or 1–800–533–3508 (Toll Free).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete Moton Elementary School, including Mugrauer Playground (Operable Unit 4) and Groundwater (Operable Unit 5), two portions of the Agriculture Street Landfill Superfund Site from the National Priorities List (NPL), Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), Code of Federal Regulations, Title 40 (40 CFR), Part 300, and requests comments on the proposed deletion. OU Nos. 1, 2, and 3 (undeveloped property, residential area, and Shirley Jefferson Community Center) are not the subject of this partial deletion.

The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites or portions of sites deleted from the NPL remain eligible for remedial actions in the unlikely event that site conditions warrant such action.

The EPA will accept comments concerning its intent to delete OU Nos. 4 and 5 for thirty (30) days after publication of this notice. The EPA has also published a notice of the availability of this Notice Of Intent for Partial Deletion (NOID) in a major newspaper of general circulation at or near the site.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Agriculture Street Landfill Superfund site and demonstrates how Operable Units 4 and 5 meet the deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other parties have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, CERCLA Section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the proposed deletion of the site:

(1) EPA Region 6 issued a Record of Decision on September 2, 1997 which documented that no further remedial action is necessary to ensure protection of human health and the environment for Agriculture Street Landfill's Operable Unit 4 and Operable Unit 5;

(2) LDEQ, on behalf of the State of Louisiana, concurred by letter dated August 28, 1997, with EPA's decision that no action was necessary for Operable Units 4 and 5 and that deletion from the NPL was appropriate;

(3) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the availability of the Notice of Intent for Partial Deletion and the commencement of a 30-day public comment period; and,

(4) EPA placed copies of documents supporting the proposed deletion in the site information repositories identified above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

This **Federal Register** notice, and a concurrent notice in a newspaper of record, announce the initiation of a thirty (30) day public comment period and the availability of the Notice of Intent for Partial Deletion. The public is asked to comment on EPA's proposal to delete OU Nos. 4 and 5 from the NPL. All critical documents needed to

evaluate EPA's decision are included in the Deletion Docket and are available for review at the information repositories.

Upon completion of the thirty (30) day public comment period, EPA will evaluate all comments received before issuing the final decision on the partial deletion. The EPA will prepare a Responsiveness Summary for comments received during the public comment period and will address concerns presented in the comments. The Responsiveness Summary will be made available to the public at the information repositories listed previously, and members of the public are encouraged to review them. If, after review of all public comments, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of OU Nos. 4 and 5 does not actually occur until the final Notice of Partial Deletion is published in the **Federal Register.**

IV. Basis for Intended Partial Site Deletion

The following information provides the Agency's rationale for the proposal to delete OU Nos. 4 and 5 from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

A. Site Location

The Agriculture Street Landfill Superfund Site (site) is approximately 95 acres and is located in the eastern section of the city of New Orleans. The site is bound on the north by Higgins Boulevard, and on the south and west by the Southern Railroad rights-of-way. The eastern site boundary extends from the cul-de-sac at the southern end of Clouet Street, near the railroad tracks, to Higgins Boulevard between Press and Montegut streets. Approximately 48 acres are undeveloped property. The other 47 acres are developed with multiple- and single-family residences, commercial properties, a community center, and a school.

To effectively investigate and develop alternatives for the remediation of the site, EPA divided the site into five operable units (OUs):

- OU1—The undeveloped (currently fenced-in) property;
- OU2—The residential development which consists of the Gordon Plaza Apartments, single family dwellings in Gordon Plaza subdivision, and the Press Park town homes;
- OU3—Shirley Jefferson Community Center (formerly known as Press Park Community Center);
- OU4—Moton Elementary School which includes Mugrauer Playground; and,
- OU5—Groundwater.

Operable Unit 4 is located in the southeast corner of the site. Coordinates for its four corners, beginning in the northwest are 29°59′ 18.76″ north latitude, 90°02′ 20.26″ west longitude; 29°59′ 17.52″ north latitude, 90°02′ 20.52″ west longitude; 29°59′ 11.12″ north latitude, 90°02′ 27.67″ west longitude; and 29°59′ 09.63″ north latitude, 90°02′ 21.76″ west longitude. Operable Unit 5 is designated as the groundwater beneath the site, within which no identified plume of contamination has been specified.

B. Site History

The Agriculture Street Landfill was a municipal waste landfill operated by the City of New Orleans. Operations at the site began in approximately 1909 and continued until the landfill was closed in the late 1950's. The landfill was reopened for approximately one year in 1965 for use as an open burning and disposal area for debris left in the wake of Hurricane Betsy. Records indicate that during its operation the landfill received municipal waste, ash from the city's incineration of municipal waste, and debris and ash from open burning. There is no evidence that industrial or chemical wastes were ever transported to, or disposed of at, the site.

From the 1970's through the late 1980's, approximately 47 acres of the site were developed for private and public uses that included: private single-family homes, multiple-family private and public housing units, Shirley Jefferson Community Center, a recreation center, retail businesses, the Moton Elementary School, and an electrical substation. The remaining 48 acres of the former landfill are currently undeveloped and covered with vegetation. Previous investigations on the undeveloped property have indicated the presence of hazardous substances, pollutants, or contaminants at concentrations above background and/or regulatory levels.

In 1986, EPA Region 6 conducted a Site Inspection and prepared a Hazard Ranking System (HRS) documentation record package utilizing the 1982 HRS model. The site score was not sufficient for the site to be considered for proposal and inclusion on the NPL. Pursuant to the requirements of Superfund Amendment and Reauthorization Act of 1986 (SARA), which amended the original Superfund legislation, EPA published a revised HRS model on December 14, 1990. At the request of area community leaders, EPA initiated, in September 1993, an Expanded Site Inspection (ESI) to support the preparation of an updated HRS documentation record package that would evaluate the site's risks using the revised HRS model. Subsequently, on August 23, 1994, the site was proposed for inclusion on the NPL as part of NPL update No. 17, and on December 16, 1994, EPA placed the site on the NPL.

Prior to 1994, access to OU1, the undeveloped portion of the former landfill, was unrestricted, allowing unauthorized waste disposal and exposure to contaminants of potential concern such as lead, arsenic and carcinogenic polynuclear aromatic hydrocarbons (cPAHs) found in the surface and subsurface soils. In a time-critical removal action, initiated in March 1994, EPA installed an 8-foot-high, chain-link fence topped with barbed wire around the entire undeveloped portion of the former landfill.

Concurrent with the time-critical removal action, EPA performed a Remedial Removal Integrated Investigation (RRII) of the entire site. RRII fieldwork was conducted from April 4 through June 20, 1994. Samples of surface and subsurface soil, sediment, surface water, groundwater, air, dust, tap water, garden produce, and paint chips collected during the field investigation were submitted to specialized laboratories for analysis. Aerial photographs, geophysical investigations and computer modeling were used to supplement the analytical data in defining site boundaries and evaluating migration pathways. These data were also used to prepare the Human Health Risk Assessment and the Ecological Risk Assessment.

Based on information presented in the RRII report, EPA conducted a second time-critical removal action at the site in February 1995, and performed confirmational air and groundwater sampling. Through this sampling event, EPA was able to obtain a second round of analyses of the groundwater, to clarify earlier identified ambient air contaminants, and to verify composition and magnitude of indoor air contaminants. In 1995, EPA prepared an Engineering Evaluation and Cost Analysis examining response action alternatives for Operable Units 1–3.

EPA Region 6 issued a Record of Decision selecting the no action alternative for Operable Units 4 and 5 on September 2, 1997. On the same day, EPA signed an Action Memorandum selecting non-time-critical removal actions for Operable Units 1, 2, and 3.

C. Characterization of Risk

No further action will be taken by EPA on Moton School, including the Mugrauer Playground (OU4) and

Groundwater (OU5). This decision is based on the risk assessment that evaluated Moton School (OU4) and Groundwater (OU5), which concluded that no unacceptable risk exists that is attributable to site related contaminants.

The baseline Human Health Risk Assessment, conducted as part of the Remedial Removal Integrated Investigation for this site, evaluated potential adverse health effects associated with site-related contaminants in the absence of remedial action. As part of the baseline Risk Assessment, an extensive evaluation of exposures to lead was performed, using EPA's Integrated Exposure Uptake Biokinetic (IEUBK) model. For contaminants other than lead, the likelihood of adverse public health impacts associated with long-term exposure to site-related contaminants was determined by (a) estimating potential excess lifetime cancer risks for carcinogens and (b) by computing hazard indices (HIs) for non-carcinogens. Federal laws, regulations, and guidance define a range of acceptable cancer risks of 1×10^{-4} (one in ten thousand) to 1×10^{-6} (one in one million), and a Hazard Index of unity (1) for non-cancer risks.

For Moton School (OU4), the total excess lifetime cancer risk posed to children attending the school was estimated 2×10^{-5} (or two in one hundred thousand), which is within the acceptable risk range specified by federal law, regulations, and guidance. Most of this estimated risk was attributable to inhalation of non-site-related benzene and chloroform from indoor and outdoor air. In addition, none of the HIs exceeded EPA's regulatory benchmark of unity.

Given the findings of the Risk Assessment, no further action for this operable unit is warranted. Deletion from the NPL should clear the way for beneficial utilization of the property of the City of New Orleans or the New Orleans School Board.

For the Groundwater Operable Unit, (OU5), information supplied to EPA by the Louisiana Department of Environmental Quality indicates that the shallow aquifer beneath the site is not suitable for human consumption, is not used for any beneficial purpose, and is not considered a potential future source of drinking water. Residents at the site area are connected to the municipal water supply for domestic water requirements. There are no on-site drinking water wells. Site groundwater presents no other exposure pathway. Therefore, no further action for this operable unit is warranted.

Because these no-action remedies will result in hazardous substances remaining on-site, a review will be conducted every five years after commencement of remedial action in accordance with CERCLA Section 121(c), 42 U.S.C. 9621(c). Should future reviews indicate that the site poses an unacceptable risk to human health or the environment, then EPA may initiate response actions under the authority of CERCLA and in accordance with the NCP.

D. Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the Partial deletion from the NPL are available to the public in the information repositories.

E. Proposed Action

The EPA, with concurrence of the State of Louisiana (LDEQ), has determined that Operable Unit 4 (Moton Elementary School, including Mugrauer Playground) and Operable Unit 5 (Groundwater) pose no significant threat to public health or the environment; therefore, no remedial measures are appropriate. In accordance with EPA policy on partial deletion of sites listed on the National Priorities List, EPA proposes to delete OU4 and OU5 from the NPL.

Dated: January 26, 2000.

Jerry Clifford,

Deputy Regional Administrator, EPA Region 6.

[FR Doc. 00–2479 Filed 2–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 567 and 568

[Docket No. NHTSA–99–5673]

RIN 2127–AE27

Vehicles Built in Two or More Stages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of meetings.

SUMMARY: This document announces the dates of the public meetings of the Negotiated Rulemaking Committee on the development of recommended amendments to the existing NHTSA regulations (49 CFR Part 567, 568) governing the certification of vehicles built in two or more stages to the Federal motor vehicle safety standards (49 CFR Part 571). The Committee was established under the Federal Advisory Committee Act.

DATES: The meetings are scheduled as follows:

1. February 9–10, 2000.
2. March 7–8, 2000.
3. April 11–12, 2000.
4. May 17–18, 2000.
5. June 21–22, 2000.

ADDRESSES: The first meeting of the advisory committee will take place at the Hotel Washington, 515 Fifteenth Street, NW., and will begin at 10 on February 9th. Information on the location of subsequent meetings may be obtained from NHTSA two weeks before the relevant meeting is to take place.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Charles Hott, Office of Crashworthiness Standards, at 202–366–4920.

For legal issues, you may call Rebecca MacPherson, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On May 20, 1999, the National Highway Traffic Safety Administration (NHTSA) published a notice of intent to establish an advisory committee (Committee) for a negotiated rulemaking to develop recommendations for regulations governing the certification of vehicles built in two or more stages. The notice requested comment on membership, the interests affected by the rulemaking, the issues that the Committee should address, and the procedures that it should follow. The reader is referred to that notice (64 FR 27499) for further information on these issues.

On December 14–15, 1999, interested parties attended a public meeting in Washington, DC. As part of that meeting, the schedule of specific dates for holding meetings of the Advisory Committee was agreed upon. Meetings of the Committee will be open to the public so that individuals who are not part of the Committee may attend and observe. Any person attending the Committee meetings may address the Committee, if time permits, or file statements with the Committee.

II. Authority

5 U.S.C. sections 561 *et seq.*, delegation of authority at 49 CFR 1.50.

Issued on: February 2, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–2717 Filed 2–2–00; 4:34 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF56

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of Released Study, Submission of New Report, and Opening of Comment Period on the New Report as it Relates to the Proposed Rule to List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; opening of comment period.

SUMMARY: We, the Fish and Wildlife Service, give notice that we are withdrawing consideration of Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar," from the decision-making process associated with the proposal to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We are replacing it with a report relevant to the Alabama sturgeon listing process. The report, "Genetic Variation in the River Sturgeon Scaphirhynchus (Acipenseridae) as Inferred from Partial mtDNA Sequences of Cytochrome b," summarizes information from the retracted study which is specific only to the Alabama sturgeon and its relevancy to the proposed listing. We are accepting comments related specifically to the relationship of this report, as it pertains to the proposed listing of the Alabama sturgeon as endangered. You may also provide comments concerning our decision to withdraw Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar" from the decision-making process for listing the Alabama sturgeon as endangered.

DATES: We will accept comments until March 8, 2000.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to the Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. You may also comment via the Internet to paul—hartfield@fws.gov. See the **SUPPLEMENTARY INFORMATION** section for comment procedures.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield (see **"ADDRESSES"** section), telephone 601/321–1125; facsimile 601/965–4340.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 1999, we published a rule proposing endangered status for the Alabama sturgeon in the **Federal Register** (64 FR 14676). On January 11, 2000, we published a notice in the **Federal Register** (65 FR 1583), to reopen the comment period through February 10, 2000, to make available for comment Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar." With this notice, we are withdrawing from consideration Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar." This study describes a method for identifying the species source of sturgeon/paddlefish caviar in international trade and includes information that is not relevant to the decision to list the Alabama sturgeon as endangered. Nonetheless, The information contained in that study that is relevant to the decision to list the Alabama sturgeon is summarized in this new report, "Genetic Variation in the River Sturgeon Scaphirhynchus (Acipenseridae) as Inferred from Partial mtDNA Sequences of Cytochrome b." For clarity and ease of understanding, we have added this new report, which describes the amount of genetic variation observed within and between species of the genus *Scaphirhynchus*, for consideration in the decision-making process, and retracted the more general report that covers identification of the species source of sturgeon/paddlefish caviar in international trade.

Public Comments Solicited

We request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this report and its relation to the proposed rule. You may also provide comments concerning our decision to withdraw Dr. Steven Fain's 1999 study, "The Development of a DNA Procedure for the Forensic Identification of Caviar" from consideration in the decision-making process for the listing of the Alabama sturgeon as endangered.

Comment Procedures

Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include "Attention: [Alabama sturgeon]" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the address given in the **ADDRESSES** section or by telephone at 601/965–4900. Finally, you may also hand-deliver comments to the address given in the **ADDRESSES** Section. 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. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. To obtain copies of either of the aforementioned reports, you can download or print one from http://endangered.fws.gov/listing/index.html (under Announcements) or contact Kelly Bibb at 404/679–7132 (phone) or 404/679–7081 (facsimile) to receive a faxed or mailed copy. All questions related to this notice should be directed to Paul Hartfield at the address or phone number listed in the **ADDRESSES** section of this notice.

References Cited

Fain, S.R., J.P. Lemay, J. Shafer, R.M. Hoesch, and B.H. Hamlin. 1999. Unpublished study. National Fish and Wildlife Forensics Laboratory, Ashland, OR. 23 pp. with figures.

Fain, S.R., B. Hamlin, and D. Straughan. 1999. Unpublished report. Genetic Variation in the River Sturgeon Scaphirhynchus (Acipenseridae) as Inferred from Partial mtDNA Sequences of Cytochrome b. National Fish and Wildlife Forensics

Laboratory, Ashland, OR. 14 pp. with figures.

Author

The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

Authority

The authority for this notice is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: February 1, 2000.

Sam D. Hamilton,

Regional Director, Fish and Wildlife Service.

[FR Doc. 00–2638 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 25
Monday, February 7, 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

Submission for OMB Review; Comment Request

February 1, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection through the use of appropriate automated, electronic, mechanical, or other technological technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–6502. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utility Service

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Summary of Collection: Under the authority of the Rural Electrification Act of 1936 (ACT), as amended 7 U.S.C. 901 *et seq.*, the Administrator is authorized and empowered to make loans under certain specified circumstances. As a requirement for these loans the Rural Utility Service (RUS) mortgage in Article 2, Section 12, requires each Mortgagor to prepare and furnish financial statements to RUS at least annually. RUS, in representing the Federal Government as Mortgagee and in furthering the objectives of the Act, relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper Act purposes.

Need and Use of the Information: RUS will collect information to evaluate borrowers' financial performance, determine whether current loans are at financial risk, and determine the credit worthiness of future losses. If information is not collected, it would delay RUS' analysis of the borrowers' financial strength, thereby adversely impacting current lending decisions.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,800.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 20,374.

Rural Utility Service

Title: 7 CFR 1792, Subpart C—Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, the time and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Public Law 95–124, 42 U.S.C. 7701 *et seq.*) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordination's approved by RUS or RTB.

Need and Use of the Information: RUS will collect information on the project designation and owners name; name of the architectural/engineering firm; name and registration number (for the State in which the building project is located) of the certifying architect or engineer; purpose and location of the facility; seismic factor for the building location; the code identity and date of the model code used for the design and construction of the building project(s); total square footage of the building project; total cost of the building project; and estimated cost of the structural systems affected by the requirements of 7 CFR part 1792, Subpart C.

Description of Respondents: Business or other for-profit.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Rural Utility Service

Title: Prospective Large Power Service.

OMB Control Number: 0572–0001.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that

agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. RUS Form 170 is used to obtain information from borrowers on contracts that the borrower proposes to enter into for a large industrial or commercial electric power load, specifically setting forth load estimates by analyzing market costs.

Need and Use of the Information: RUS will collect information to show the feasibility of providing services to prospective large power consumers; check the adequacy of rates based on the amount of investment in facilities; show the method used to obtain funds for financing construction; and show contract terms, *i.e.*, length of service, proposed rate, and minimum charge.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 5.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22.

Food and Nutrition Service.

Title: Summer Food Service Program Claim for Reimbursement.

OMB Control Number: 0584–0041.

Summary of Collection: The Summer Food Service Program Claim for Reimbursement Form is used to collect meal and cost data from sponsors to determine the reimbursement entitlement for meals served. The form is sent to the Food and Nutrition Service's (FNS) Regional Offices where it is entered into a computerized payment system. The payment system computes earnings to date and the number of meals to date and generates payments for the amount of earnings in excess of prior advance and claim payments. To fulfill the earned reimbursement requirements set forth in the Summer Food Service Program regulations issued by the Secretary of Agriculture (7 CFR 225.9), the meal and cost data must be collected on the FNS–143 claim form.

Need and Use of the Information: FNS will collect information to manage, plan, evaluate, and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds. If the information is not collected on the claim form, the sponsor could not receive reimbursement.

Description of Respondents: Not-for-profit institutions.

Number of Respondents: 530.

Frequency of Responses: Recordkeeping; Reporting: Other (Summer).

Total Burden Hours: 1,193.

Forest Service

Title: Improve Management of the Tongass National Forest and Service to Local, Regional, and National Customers.

OMB Control Number: 0596–NEW.

Summary of Collection: The Tongass National Forest encompasses nearly 85 percent of the land in southeast Alaska and forms the basis for the regional economy. Commercial fishing, timber production, mineral extraction, and the quickly growing tourism industry depend on the renewable and non-renewable natural resources of this national forest. Forest plans are required by the National Forest Management Act of 1976; the Alaska National Interest Conservation Act of 1980 requires evaluation of forest plans and other use actions in Alaska that may affect subsistence use of fish and wildlife. The Forest Service (FS) will manage the Tongass National Forest, the nation's largest National Forest, over the next 10–15 years. Tourism, expected to continue to grow at 10–20% per year in coming years, is beginning to tax both the natural resources and the resident communities of the area. The Tongass Land Management Plan recognized significant changes in public use of the forest and in public values and attitudes and identified the information need to collect relevant socioeconomic data. The FS will collect information using a study survey.

Need and Use of the Information: FS will collect information to identify needs by providing information on public use of the Tongass National Forest and on public attitudes and values relevant to the forest management issues that are likely to be important in coming years. The information will be used in making regular management decisions and in developing larger scale plans for the Tongass National Forest. If the information is not collected, FS decision-makers/will lack essential information.

Description of Respondents: Individuals or households.

Number of Respondents: 1600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 800.

Farm Service Agency

Title: Warehouse Regulations under USWA and Standards for Approval of Warehouses.

OMB Control Number: 0560–0120.

Summary of Collection: Section 4 of the United States Warehouse Act (USWA) (7 U.S.C. 244) states that the Secretary of Agriculture, or his designated representative, is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this Act and such rules and regulations as may be hereunder: PROVIDED, that each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehousemen agree, as a condition to the granting of the license, to comply with and abide by all the terms of this act and the rules and regulations prescribed hereunder. The USWA is administered by the Farm Service Agency (FSA). Although there are several warehouse types covered under the USWA, the reporting requirements within a particular warehouse type are essentially the same as those across all warehouse types and, with some exceptions, the forms are used bilaterally; that is, they are used for both USWA licensing and Commodity Credit Corporation purposes. The forms are furnished to interested warehousemen/warehouse operators or used by the warehouse examiners employed by FSA to secure and record information about the warehouseman/warehouse operators and the warehouse. FSA will collect information using several forms.

Need And Use of the Information: FSA will collect Information (1) to determine whether or not the warehouse and the warehouseman/warehouse operator making application for licensing and/or approval meets applicable standards; (2) to issue such licensed or approvals' (3) to determine. once licenses or approved, that the licensee or warehouse operator continues to meet such standards and is conforming to regulatory or contractual obligations; (4) to determine that the stored commodity is in good condition; and (5) to determine that the licensee or warehouse operator is storing the commodity for which licensed or approved in a safe and prudent manner.

Description of Respondents: Business or other for-profit.

Number of Respondents: 4,500.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually; Other (daily record).

Total Burden Hours: 15,151.

Food and Nutrition Service

Title: 7 CFR Part 220 School Breakfast Program.

OMB Control Number: 0584–0012.

Summary of Collection: Section 4 of the Child Nutrition Act (CNA) of 1966, as amended, authorizes the School Breakfast Program (SBP). The Food and

Nutrition Service (FNS) administers the School Breakfast Program on behalf of the Secretary of Agriculture so that needy children may receive their breakfasts free or at a reduced price. Although supervised by FNS, the SBP is delivered through State agencies and school food authorities. FNS must collect information at regular intervals from these organizations to determine eligibility and to determine the number of meals served and the amount of reimbursement due. FNS also requires that certain records be maintained as directed by the CNA and associated regulations.

Need and Use of the Information: School food authorities provide information to State agencies. The State agencies report to FNS. FNS uses the information submitted to determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to develop projections for future program operations.

Description of Respondents: State, Local, or Tribal Government, Individuals or household, Business or other for-profit, Not-for-profit institutions, Federal Government.

Number of Respondents: 81,748.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually; Other.

Total Burden Hours: 4,894,701.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 00–2619 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–932–4 NC]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for Olives Grown in California, Marketing Order 932.

DATES: Comments on this notice must be received by April 7, 2000, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, Telephone: (202) 720–2491, Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Gerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Olives Grown in California, Marketing Order 932.

OMB Number: 0581–0142.

Expiration Date of Approval: October 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California olive marketing order program, which has been operating since 1965.

The California olive marketing order authorizes the issuance of quality, size, and inspection requirements. The order also has authority for research and development projects, including paid advertising. Pursuant to section 8e of the Act, import grade and size requirements are implemented on olives imported into the United States.

The order and its rules and regulations authorize the California Olive Committee (committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the committee relating to olive supplies, shipments, dispositions, and other information necessary to effectively carry out the purpose of the Act and the order. California olives are shipped year-round and these forms are used accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the order.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

All the forms under this program require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .28 hour per response.

Respondents: California olive handlers and growers.

Estimated Number of Respondents: 692.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 3881 hours.

Comments are invited on: (1) Whether the proposed collection of the 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.

Comments should reference OMB No. 0581–0142 and California Olive Marketing Order No. 932, and be sent to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments received will be available for public inspection during regular business hours at the same address and will become a matter of public record.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 31, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2691 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–00–02]

Guidelines for AMS Oversight of Commodity Research and Promotion Programs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; extension of comment period.

SUMMARY: The Department of Agriculture (USDA) is extending the comment period for notice seeking comments on the "Guidelines for AMS Oversight of Commodity Research and Promotion Programs" (Guidelines). The extension will provide interested persons with additional time in which to prepare and submit comments on the notice.

DATES: Comments must be received on or before June 30, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice to: Barbara C. Robinson, Deputy Associate Administrator, Room 3069 South Bldg., U.S. Department of Agriculture, AMS, OA, Washington, D.C. 20250; telephone (202) 720–4276; fax (202) 690–3967. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: public.comments@usda.gov. All comments should indicate the docket number and the date and page number of this issue of the **Federal Register**. A copy of this notice may be found at: www.AMS.USDA.Gov/R&P/.

SUPPLEMENTARY INFORMATION: On December 17, 1999, we published in the **Federal Register** Doc. 99–32730, a notice seeking comments on the Guidelines. Comments were to be received on or before March 17, 2000. The notice was authorized under the following Federal statutes: the Beef Promotion and Research [7 U.S.C. 2901–2911]; the Canola and Rapeseed Research, Promotion, and Consumer Information Act [7 U.S.C. 7441–7452]; the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7411–7425]; the Cotton Research and Promotion Act [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Egg Research and Consumer Information Act [7 U.S.C. 2701–2718]; the Floral Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act [7 U.S.C. 6801–6814]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Lime Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 6201–6212]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the National Kiwifruit Research, Promotion, and Consumer Information Act [7 U.S.C. 7461–7473]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; the Watermelon Research and Promotion Act, as amended [7 U.S.C. 4901–4916]; and the Wheat and Wheat Foods Research and Nutrition Education Act [7 U.S.C. 3401–3417].

There are currently 13 active programs under these statutes: beef, cotton, dairy, eggs, fluid milk, honey, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons.

USDA's Agricultural Marketing Service (AMS) developed the guidelines to facilitate uniform oversight of these and any future national research and promotion programs. The guidelines are part of the findings and recommendations of the Research and Promotion Task Force (task force) that was created by Secretary Glickman in November 1998. The task force held a public meeting in March 1999 and held several working meetings to review the oversight responsibilities of AMS and board operations.

In response to requests from several organizations for additional time to comment, we are extending the comment period until June 30, 2000. This action will allow interested groups, individuals, and other entities additional time to prepare and submit comments.

Dated: February 1, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–2690 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Alabama Electric Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Alabama Electric Cooperative for financing assistance to finance the construction of the a 496 megawatt combined cycle electric generation plant in Covington County, Alabama.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The proposed plant will be constructed on a site adjacent to the existing Alabama Electric Cooperative's McWilliams Plant located near Gantt in Covington County, Alabama. It will be made up of two combustion turbines which have the potential to generate 166 megawatts each. The exhaust gas from each

combustion turbine will be fed to a heat recovery steam generator. The output from each heat recovery steam generator will be fed to a single steam turbine that has the potential to generate 164 megawatts. Each heat recover steam generator will incorporate a selective catalytic reduction system to remove nitrogen oxides from the combustion turbine's exhaust gas. The combustion turbines units will be shop-built and shipped to the site as modules that will be installed on steel-reinforced concrete foundations. Related improvements will include the construction of a new electric transmission station and an 18.6-mile, 230 kV transmission line circuit between the Gantt Plant and the Opp Switching Station. The Southeast Alabama Gas District will construct a 60-mile-long, 20-inch diameter natural gas pipeline from Flomaton, Alabama, to the Gantt site to provide the natural gas to power the plant. RUS will not provide financing assistance for the natural gas pipeline.

Based on its environmental assessment of the project, RUS has concluded that the construction and operation of the 496 megawatt plant at the Gantt site would have no significant impact to the quality of the human environment. Therefore, RUS will not prepare an environmental impact statement for its action related to this project.

Copies of the FONSI are available from RUS at the address provided herein or from Mike Noel, Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420–0550, telephone (334) 427–3248. Mike's e-mail address is: mike.noel@powersouth.com.

Dated: January 31, 2000.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 00–2692 Filed 2–4–00; 8:45 am]

BILLING CODE 3410–15–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: 2000 Panel of the Survey of Income and Program Participation, Wave 2 Topical Modules.

Form Number(s): SIPP–20205(L), SIPP/CAPI automated instrument.

Agency Approval Number: 0607–0865.

Type of Request: Revision of a currently approved collection.

Burden: 25,467 hours.

Number of Respondents: 26,250.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The Census Bureau conducts the Survey of Income and Program Participation (SIPP) to collect information concerning the distribution of income received directly as money or indirectly as in-kind benefits. SIPP data are use by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare and transfer payment programs such as the Department of Health and Human Services, the Department of Housing and Urban Development, and the Department of Agriculture.

The SIPP is a longitudinal survey, in that households in the panel are interviewed at 4-month intervals or waves over the life of the panel. The duration of a panel is typically 3 to 4 years. The length of the 2000 SIPP Panel is subject to the approval of budget initiatives but is currently scheduled for one year and will include three waves of interviews.

The survey is molded around a central core of labor force and income questions, health insurance questions, and questions concerning government program participation that remain fixed throughout the life of the panel. The core questions are asked at Wave 1 and are updated during subsequent interviews. The core is supplemented with additional questions or topical modules designed to answer specific needs.

This request is for clearance of the topical modules for Wave 2. The core questionnaire and topical modules for Wave 1 were cleared previously. The topical modules for Wave 2 are: Work Disability, Education and Training History, Marital History, Fertility History, Migration History,.and Household Relationships. Wave 2 interviews will be conducted from June through September 2000. Additionally, a reinterview for quality control purposes will be conducted with a small sub-sample of respondents throughout the life of the panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

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 5033, 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: January 31, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–2633 Filed 2– 4–00; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–403–802]

Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon From Norway

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Fresh and Chilled Atlantic Salmon from Norway.

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, as well as inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 7, 2000.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3--*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The product covered by the countervailing duty order is the species Atlantic salmon (Salmon Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called "king" or "quinnat"), Coho ("silver"), Sockeye ("redfish" or "blueback"), Humpback ("pink") and Chum ("dog"). Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice ("chilled"). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon was classifiable under item number 110.2045 of the Tariff Schedules of the United States Annotated ("TSUSA"). Prior to January 1, 1990, Atlantic salmon was provided for under item numbers 0302.0060.8 and 0302.12.0065.3 of the Harmonized Tariff Schedule of the United States ("HTSUS") (56 FR 7678, February 25, 1991). Currently, it is provided for under HTSUS item number 0302.12.00.02.09. The subheadings above are provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the subject order.

History of the Order

On February 25, 1991, the Department issued a final determination in the countervailing duty investigation, covering the period September 1, 1989, through February 28, 1990. The following six programs were found to confer countervailable subsidies on Norwegian producers/exporters of subject merchandise: (1) *Regional Development Fund Loans and Grants*; (2) *National Fishery Bank of Norway Loans*; (3) *Regional Capital Tax Incentive*; (4) *Reduced Payroll Taxes*; (5) *Advance Depreciation of Business Assets*; and (6) *Government Bank of Agricultural Grants*. The Department found a net subsidy of 2.27 percent *ad valorem* for all Norwegian producers/exporters of subject merchandise.

There have been no administrative reviews of this countervailing duty order.

Background

On July 1, 1999, the Department initiated a sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway (64 FR 35588), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of domestic interested parties within the deadline (July 15, 1998) specified in § 351.218(d)(1)(i) of the *Sunset Regulations*. Subsequently, we received a complete substantive response to the notice of initiation on August 2, 1999, on behalf of the Coalition for Fair Atlantic Salmon Trade ("FAST") and the following individual members of FAST: Atlantic Salmon of Maine, Connors Aquaculture, Inc., DE Salmon, Inc., Island Aquaculture Corp., Maine Aqua Foods, Inc., Maine Coast Nordic, Inc., Treats Island Fisheries, and Trumpet Island Salmon Farm, Inc. (collectively, "domestic interested parties"). As U.S. producers of the subject merchandise and a business association whose members are U.S. producers of the subject merchandise, the domestic interested parties claim interested-party status under sections 771(9)(C) and (F) of the Act. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218 (e)(1)(ii)(C), determined to conduct an expedited (120-day) review of this order.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). On October 18, 1999, the Department determined the sunset review of the countervailing duty order on fresh and chilled Atlantic salmon from Norway to be extraordinarily complicated, and, therefore, we extended the time limit for completion of the final results of this review until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Although the deadline for this determination was originally January 27, 2000, due to the Federal Government shutdown on January 25 and 26, 2000, resulting from inclement weather, the timeframe for issuing this determination has been extended by one day.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the Commission the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic interested parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues,

[1] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 62167 (November 16, 1999).

including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a sunset review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[2] In the instant review, the Department did not receive a response from the foreign government or any other respondent interested party. Pursuant to 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The domestic interested parties argue that revocation of the countervailing duty order on fresh and chilled Atlantic salmon from Norway likely result in continued unfair subsidization by the Government of Norway, as well as material injury to the U.S. industry. They assert that, because there have been no administrative reviews of the countervailing duty order and the Department has not examined the programs further, the Government of Norway presumably continues to subsidize producers/exporters of subject merchandise.

The domestic interested parties also note that the European Commission, in a 1996 countervailing duty investigation, determined that the Government of Norway conferred countervailing subsidies amounting to 3.84 percent *ad valorem* on producers/exporters of fresh Atlantic salmon (*see* August 2, 1999, Substantive Response of domestic interested parties at 21). The domestic interested parties note that the European Commission's findings, which investigated subsidies provided to Norwegian salmon farmers between July 1, 1995 and July 31, 1996, demonstrate that the Government of Norway has continued to subsidize its domestic salmon farming industry and the amount of these subsidies has increased since the Department's 1991 final affirmative determination. *Id.*

The Department agrees with the domestic interested parties that because there have been no administrative reviews of this order and no evidence has been submitted to the Department demonstrating the termination of the countervailable programs, it is reasonable to assume that these programs continue to exist and are utilized. Moreover, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of a countervailable subsidy where the foreign government and/or a respondent interested party waives its participation in the sunset review. Therefore, because we assume countervailable programs continue to exist, the foreign government and other respondent interested parties have waived participation in the review, and absent any argument to the contrary, the Department concludes that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[3]

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. However, this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[4]

The domestic interested parties, citing the SAA, note that the Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior or exporters and foreign governments without the discipline of an order in place (*see* August 2, 1999 Substantive Response of domestic interested parties at 25). The domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail is 2.27 percent, the rate set forth in the original investigation.

The Department agrees with the domestic interested parties. The rate determined in the original investigation was 2.27 percent for all imports of fresh and chilled Atlantic salmon from Norway. As noted above, there have been no administrative reviews of the order. Absent administrative review, the Department has never found that substantive changes have been made to the programs found to be countervailable. Furthermore, there are no other U.S. countervailable duty proceedings involving Norway. Therefore, since there is no evidence that changes have been made to any of the Norwegian subsidy programs, and absent any argument and evidence to the contrary, the Department determines that a net countervailable subsidy of 2.27 percent would be likely to prevail if the order were revoked. This rate is the rate for all producers and exporters of subject merchandise from Norway.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic interested parties did not address this issue in their substantive response of August 2, 1999.

The following programs, although not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

Regional Development Fund Loans and Grants (RDF). The RDF provides

[2] *See* 19 CFR 351.218(d)(2)(iv).

[3] *See* 19 CFR 351.218(d)(2)(iv).

[4] *See* section III.B.3 of the *Sunset Policy Bulletin*

loan guarantees, long-term loans, and investment and business development grants to producers and exporters located only in specified regions of Norway to strengthen the economic base and to increase employment in regions with low levels of economic activity.

National Fishery Bank of Norway Loans (NFB). The NFB provided loans for the financing of fish farms from 1974 through 1987, including long-term loans for investment in production equipment and buildings.

Regional Capital Tax Incentive. The aim of the Regional Capital Tax Incentive is to encourage investment in regions of Norway with a weak industrial base and considerable unemployment. Funds set aside by the taxpayer under this program are deducted from taxable income (at a maximum amount of 15 percent), and must then be invested in capital assets for the use in the taxpayer's own business.

Reduced Payroll Taxes. This program aims at encouraging employment of persons living in underdeveloped regions of Norway. Under the National Insurance Act, employers are liable for the payment of payroll taxes which are based on a percentage of the wages paid in the course of a year. However, since 1975, the amount of contributions have been geographically differentiated depending on the municipality in which the employee resides.

Advance Depreciation of Business Assets. This program encourages investment in less-developed areas of Norway by allowing companies located in selected districts of the country to claim a higher rate of depreciation in the year in which capital assets are acquired. Eligible companies, depending on their location, are allowed to take a first-year deduction of either 25 or 40 percent. After this initial deduction, the producer is then allowed to take the standard deduction on the remainder of the depreciable value of the asset.

Government Bank of Agriculture. The Bank administers the Norwegian Fund of Development in Agriculture which was established to create supplemental income and employment for farmers. The Bank provides both long-term loans and interest-free loans and grants to all agricultural producers throughout Norway, however, there are maximum levels of assistance which differ by region.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Producer/exporter	Net countervailable subsidy (percent)
All Producers/Exporters from Norway	2.27

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 28, 2000.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–2592 Filed 2–3–00; 8:45 am]

BILLING CODE 3510–DS–P

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 2001 to the Congress and the Office of Management and Budget.

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its *Sequestration Preview Report for Fiscal Year 2001* to the House of Representatives, the Senate, and the Office of Management and Budget

Dan L. Crippen,

Director, Congressional Budget Office.

[FR Doc. 00–2843 Filed 2–4–00; 8:45 am]

BILLING CODE 0070–02–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.132A–1]

Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: This program provides support for planning, conducting, administering, and evaluating centers for independent living (centers) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the State plan for establishing a statewide network of centers. Centers are consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agencies that are designed and operated within local communities by individuals with disabilities and provide an array of independent living (IL) services.

Eligible Applicants: To be eligible to apply, an applicant must—(a) be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency as defined in 34 CFR 364.4(b); (b) have the power and authority to meet the requirements in 34 CFR 366.2(a)(1); (c) be able to plan, conduct, administer, and evaluate a center for independent living consistent with the requirements of section 725(b) and (c) of the Act and Subparts F and G of 34 CFR part 366; and (d) either—(1) not currently be receiving funds under Part C of Chapter 1 of Title VII of the Act; or (2) propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) in a different geographical location. Eligibility under this competition is limited to entities that meet the requirements of 34 CFR 366.24 and propose to serve areas that are unserved or underserved in the States and territories listed under Available Funds.

Deadline for Transmittal of Applications: March 31, 2000.

Deadline for Intergovernmental Review: May 30, 2000.

Applications Available: February 8, 2000.

Available Funds: $697,191 as distributed in the following manner:

American Samoa	$154,046
Arizona	32,983
California	124,582
Guam	58,162
Maryland	25,597
New York	77,043
N. Marianas	58,162
Ohio	47,459
Texas	119,157

Estimated Range of Awards: $25,597–$154,046.

Estimated Average Size of Awards: $77,466.

Estimated Number of Awards: 1 per eligible State.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 364 and 366.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site *(http://www.ed.gov/pubs/edpubs.html)* or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.132A–1.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Jackie Maddox, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 401–3088. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access To this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use to PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority:
29 U.S.C. 796f, 796f–1, 796f–4, and 796f–5.

Dated: February 1, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–2599 Filed 2–4–00; 8:45 am]

BILLING CODE 4001–01–M

DEPARTMENT OF ENERGY

Notice of Availability of Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory (NETL), U.S. Department of Energy (DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation DE–PS26–00NT40777 entitled "High Pressure Combustion Kinetics". The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (cooperative agreements) to U.S. universities, private energy equipment researchers, developers or manufacturers. Teaming among organizations with expertise in energy systems development, computational modeling, and experimental research is highly encouraged. The program seeks to obtain reaction kinetic data of high pressure (12–33 atmospheres) and high temperature (1600–3000 °F) combustion systems, which operate in reaction environments ranging from sub-stoichiometric to oxygen enhanced, to serve as a basis for development of advanced combustion power systems. Applications will be subjected to review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific engineering evaluation of the responses received to determine the relative merit of the approach taken in response to this offering by the DOE, and funding availability.

DATES: The solicitation will be available on the DOE/NETL's Internet address at http://www.netl.doe.gov/business on or about February 15, 2000. The closing date for submission of applications will be April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Donna J. Jaskolka, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, Acquisition and Assistance Division, P.O. Box 10940, Pittsburgh PA 15236–0940, Telephone: (412) 386–6106, FAX: (412) 386–6137, E-mail: jaskolka@netl.doe.gov.

SUPPLEMENTARY INFORMATION:

Title of Solicitation: DE–PS26–00NT40777, "High Pressure Combustion Kinetics".

Objectives: The overall objective of Financial Assistance Solicitation No. DE–PS26–00NT40777 is to obtain quantitative kinetic expressions required for flow simulation, design and operation of high pressure (12–33 atm), high temperature (1600–3000 °F) combustion systems, which operate in reaction environments ranging from sub-stoichiometic to oxygen enhanced, to serve as a basis for development of advanced combustion power systems.

Eligibility: Eligibility for participation in this Program Solicitation is unrestricted. The solicitation will contain a complete description of the technical evaluation factors and relative importance of each factor.

Areas of Interest: Each proposal (application) submitted in response to DE–PS26–00NT40777 must focus on one of the following distinct areas of interest: (1) Suspension fired combustion systems including pulverized coal and cyclone fired combustion systems, or (2) Fluidized bed combustion systems including bubbling, circulating, and transport fluidization combustion systems. If an offeror is interested in conducting research in more than one area, the offeror must submit a separate proposal for each item.

The proposers (applicants) who do the best job of focusing and integrating the combustion kinetics experimental program to extend and/or develop computational combustion systems models that can be used for evaluation and design of Vision 21 combustion systems will have the highest potential for acceptance. The proposals that include schematics and narrative descriptions of coal fueled energy plants (power and/or transportation fuels and/or chemical) that include combustion systems that have a high potential to meet the Vision 21 goals referenced above based on extension of the state of the art or based on new novel systems approaches are sought. The experimental work proposed must be a product for the extension or development of a specific (proposer defined) design model to characterize combustion systems defined in the areas of interest described below.

Awards: DOE anticipates issuing financial assistance (cooperative agreements) for each project selected. DOE reserves the right to support or not

support, with or without discussion, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year. Approximately $3,000,000 is planned for this solicitation over a three-year period. The total estimated DOE funding is $1,000,000–$1,500,000 per award. Cost sharing by the applicant is to be not less than 20% of the total proposed amount, and may consist of in-kind contributions.

E-Mail Notification Process: Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the "Coal Conversion/Solid Fuels Feedstocks" technology choice located under the heading "Fossil Energy." Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation will not be accepted and/or honored. Applications must be prepared and submitted in accordance with instructions contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on January 25, 2000.

Dale A. Siciliano,

Deputy Director Acquisition and Assistance Division.

[FR Doc. 00–2708 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Computer Software Available for License

AGENCY: Office of General Counsel, Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy announces that the following computer software is available for license: EC–WEB and EC/EDI Gateway small purchase software.

FOR FURTHER INFORMATION CONTACT: Michael P. Hoffman, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585; Telephone (202) 586–2802.

SUPPLEMENTARY INFORMATION: The above-captioned computer software was prepared by a DOE contractor. It is used to assist the Department in making small purchases. The software is currently in need of revision, and the Department is looking for one or more private-sector parties who will revise and maintain the software at their own expense. A royalty free, worldwide, non-exclusive, or if deemed necessary, exclusive copyright license will be given as the incentive. The Government will retain an unlimited, royalty free, non-exclusive license in the original version of the software, and will receive a Government-wide, non-exclusive, world-wide, royalty free license to reproduce, distribute and modify the revised version prepared by the selected exclusive copyright licensee. The selected private-sector party or parties will have the right to market the software to non-Government parties. Parties will be given 45 calendar days from the date of this Notice to contact the Department. After the period for response has elapsed, respondents will be sent a series of questions on their plans for revising and maintaining the software, and under what terms they would make it available to the Government. DOE will then decide which party or parties to select.

Issued in Washington, DC, on February 1, 2000.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 00–2704 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

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), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 23, 2000 6:00 p.m.–9:00 p.m.

ADDRESSES: Richard E. Lucerno Community and Recreation Center, 404 North Paseo de Onate, Espanola, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org

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:

Opening Activities, 6:00 p.m.–6:30 p.m.

Public Comment, 6:30 p.m.–7:00 p.m.

Committee Reports: Environmental Restoration, Monitoring and Surveillance, Waste Management, Community Outreach, Budget.

Other Board business will be conducted as necessary.

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 Ann DuBois 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 Official 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 beginning of the meeting.

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 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on February 1, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2705 Filed 2–4–00; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Semi-Annual Chairs Meeting

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), Semi-Annual Chairs Meeting. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, February 18, 2000, 8:30 a.m.–5:00 p.m.; Saturday, February 19, 2000, 8:00 a.m.–5:00 p.m.

ADDRESSES: Cavanaugh's on the Falls, 475 River Parkway, Idaho Falls, Idaho, 800–325–4000.

FOR FURTHER INFORMATION CONTACT: Fred Butterfield, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585, (202) 586–5542.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities.

Tentative Agenda

Friday, February 18, 2000: EM SSAB Chairs Meeting (Day 1)

8:00–8:30 a.m—Registration
8:30–8:45 a.m—Welcome by Ms. Bev Cook, Manager, DOE Idaho Operations Office; Mr. Chuck Rice, Chair of INEEL CAB; and the Honorable Linda Milam, Mayor of Idaho Falls, ID
8:45–8.50 a.m—Introductory remarks (Martha Crosland, Director, EM Office of Intergovernmental and Public Accountability, DOE-Headquarters)
8:50–9:00 a.m—EM SSAB Chairs Meeting "Rules of Engagement" (Wendy Green Lowe, INEEL CAB Administrator/Facilitator)
9:00–10:00 a.m—Update on EM Integration Program (Mr. David Huizenga, Deputy Assistant Secretary for Integration and Disposition)
10:00–10:15 a.m—Break
10:15–11:00 a.m—Integrated Nuclear Materials Management Plan (Dave Huizenga)
11:00 a.m.–11:45 a.m—Update on Status of Stakeholder Questions from May 1999 SSAB Transportation Workshop, Cincinnati, OH (Dave Huizenga)
11:45 a.m.–1:00 p.m—Lunch
1:00 p.m.–2:45 p.m—"Round-robin" general issues and information exchange among local EM SSABs (SSAB Chairs)
2:45–3:00 p.m—Break
3:00–4:00 p.m—Overview of the FY 2001 EM Budget and discussion of EM's 2000 Paths to Closure Process (Fred Butterfield, Office of Policy, Planning & Budget)
4:00–4:45 p.m—Summary/Discussion: Oak Ridge Stewardship Seminar (Oak Ridge)
4:45–5:00 p.m—Public Comment period (Wendy)
5:00 p.m—Dinner (on your own)

Saturday, February 19, 2000: EM SSAB Chairs Meeting (Day 2)

8:00–9:00 a.m—DOE–EM Informational and Status Updates (Martha)
- Waste Management PEIS and Disposal Records of Decision
- PEIS Lawsuit Settlement
- Waste Isolation Pilot Plant (WIPP)
- NEPA (EIS/EA) Status Updates
- Transportation Protocols Standardization Initiative
- DOE–EM Reorganization ImplementationP='02'≤

9:00–10:00 a.m—Update/Discussion on Draft Revised EM SSAB Guidance (Fred)
10:00–10:30 a.m—Discussion: Determine Interest in Offering the EM "Environmental Laws and Regulations" Training Course for EM SSAB Chairs at next SSAB Chairs' Meeting (Martha)
10:30–11:00 a.m—New Business/TBD (Martha)
11:00–11:15 a.m—Public comment period (Wendy)
11:15–11:30 a.m—Break
12:00 p.m—Closing Remarks/Adjourn (Martha)
12:00 p.m.–1:00 p.m—Lunch (on your own)P='02'≤
1:00–5:00 p.m—Opportunities for informal gatherings of EM SSAB Chairs, SSAB Administrators/Facilitators, and DOE SSAB Federal Coordinators
5:00 p.m—Dinner (on your own)

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda)P='02'≤

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at their specific site, or Fred Butterfield at the address 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 Designated Federal Officer, Martha Crosland, and the Deputy Designated Federal Officer, Fred Butterfield, U.S. Department of Energy, are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: A written summary 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 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. The meeting summary will also be available by writing the EM–SSAB Chair or Designated Deputy Federal Officer of every EM–SSAB that participated in the meeting.

Issued at Washington, DC on February 1, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–2706 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy (DOE or Department) is forecasting the representative average unit costs of five residential energy sources for the year 2000. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products, established by Part B of Title III of the Energy Policy and Conservation Act.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective March 8, 2000 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: Dr. Barry P. Berlin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9127. Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION: Section 323 of the EPCA (Act) [1] requires that DOE prescribe test procedures for the determination of the estimated annual operating costs or other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission's appliance labeling program, established by section 324 of the Act, and in connection with advertisements of appliance energy use and energy costs, which are covered by section 323(c) of the Act.

The Department last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products Other Than Automobiles on January 5, 1999. (64 FR 487). Effective March 8, 2000, the cost figures published on January 5, 1999 will be superseded by the cost figures set forth in this notice.

The Department's Energy Information Administration (EIA) has developed the 2000 representative average unit after-tax costs of electricity, natural gas, No. 2 heating oil, propane, and kerosene prices found in this notice. The cost projections for heating oil, electricity, and natural gas are found in the fourth quarter, 1999, EIA *Short-Term Energy Outlook*, DOE/EIA–0226 (99/4Q), and reflect the mid-price scenario. Projections for residential propane and kerosene prices are derived from their relative prices to that of heating oil, based on 1998 averages for these three fuels. The source for these price data is the September 1999, *Monthly Energy Review* (DOE/EIA–0035(99/09). The *Short-Term Energy Outlook* and the *Monthly Energy Review* are available at the National Energy Information Center, Forrestal Building, Room 1F–048, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8800.

We provide the 2000 representative average unit costs in Table 1 pursuant to section 323(b)(4) of the Act, and they will become effective March 8, 2000. They will remain in effect until further notice.

Issued in Washington, DC, on February 2, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[2000]

Type of energy	Per million Btu [1]	In commonly used terms	As required by test procedure
Electricity	$23.53	8.03¢/kWh [2] [3]	$.0803/kWh
Natural gas	6.88	68.8¢/therm [4] or $7.07/MCF [5] [6]	.00000688/Btu
No. 2 Heating Oil	7.86	$1.09/gallon [7]	.00000786/Btu
Propane	10.07	92¢/gallon [8]	.00001007/Btu
Kerosene	8.44	$1.14/gallon [9]	.00000844/Btu

[1] Btu stands for British thermal units.
[2] kWh stands for kilowatt hour.
[3] 1 kWh = 3,412 Btu.
[4] 1 therm = 100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,027 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 00–2707 Filed 2–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–15–001]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2000.

Take notice that on January 24, 2000, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of February 1, 2000:

Twenty-Eight Revised Sheet No. 31
Fifty-Fifth Revised Sheet No. 32
Forty-Seventy Revised Sheet No. 33
Twenty-First Revised Sheet No. 34
Twenty-Fourth Revised Sheet No. 35
Third Revised Sheet No. 130
Fifth Revised Sheet No. 346
Fifth Revised Sheet No. 347
Fifth Revised Sheet No. 348
Fifth Revised Sheet No. 349
Seventh Revised Sheet No. 350A
Third Revised Sheet No. 380

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended. 42 U.S.C. 6291–6309.

CNG states that the purpose of this filing is to implement the Stipulation and Agreement Amending Rate Case Settlement filed October 5, 1999, (Settlement) that was approved by the Settlement Order. To implement the Settlement, CNG is required to make two types of tariff revisions: (1) It must reduce its rates as required by the Settlement for services that are subject to the Transportation Cost Rate Adjustment (TCRA); and (2) it must revise certain tariff language that is affected by the Settlement.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–2652 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–010]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2000.

Take notice that on January 27, 2000, CNG Transmission Corporation (CNG), filed as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Eighth Substitute 17th Revised Sheet No. 31
Fourth Substitute 19th Revised Sheet No. 35

CNG requests an effective date of November 1, 1998, for Eighth Substitute 17th Revised Sheet No. 31 and an effective date of January 1, 1999, for Fourth Substitute 19th Revised Sheet No. 35.

CNG states that the purpose of its filing is to correct two inadvertent and recently discovered errors appearing on two tariff sheets filed on November 10, 1999, in Docket No. TM99–1–22–008. CNG also states that the changes do not affect the amounts billed to CNG's customers.

CNG states that copies of its filing are being served upon the parties listed on the Official Service List of the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2656 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–170–000]

Columbia Gas Transmission Corporation; Notice of Proposed Change in Gas Tariff

February 1, 2000.

Take notice that on January 28, 2000, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of March 1, 2000.

Columbia is making the instant filing to reflect various administrative revisions to its FERC Gas Tariff, Second Revised Volume No. 1 to reflect items including, but not limited to, changes to date references on various forms of service agreements and revisions to company contact information.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

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 Sections 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. 00–2655 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–73–000]

Duke Energy Hidalgo, L.P.; Notice of Amended Application for Commission Determination of Exempt Wholesale Generator Status

February 1, 2000.

Take notice that on January 20, 2000, Duke Energy Hidalgo, L.P. filed an amendment to their application for exempt wholesale generator status filed on December 30, 1999.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments 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). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before February 11, 2000, and must be served on the applicant. 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 or on the internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2657 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–043]

El Paso Natural Gas Company; Notice of Compliance Filing

February 1, 2000.

Take notice that on January 27, 2000, El Paso Natural Gas Company (El Paso) tendered for filing a revised, partially executed Transportation Service Agreement (TSA) between El Paso and Enron North America Corp. dated December 17, 1999 to be effective February 1, 2000.

El Paso states that the above TSA providing for Block II capacity rights is being filed to comply with the Commission's order issued January 19, 2000 in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2658 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP93–187–016]

Equitrans, L.P.; Notice of Reconciliation Report

February 1, 2000.

Take notice that on January 28, 2000, Equitrans, L.P. (Equitrans) hereby submits the Reconciliation Report pursuant to Article II, Section 1 of the Stipulation and Agreement (Settlement) filed on July 31, 1995 in the above reference dockets, approved by the Commission on September 28, 1995.

Equitrans states that the purpose of this filing is to report the actual costs expended by Equitrans during the four-year surcharge period for well plugging and abandonment. The report shows by well number each of the wells plugged and abandoned, the date of the plugging and abandonment, current net book value of the wells of Equitrans' books, and the amounts incurred for such plugging and abandonment. Equitrans states that it will file a refund report with a true-up within thirty days of filing this reconciliation report.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 8, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2651 Filed 2–04–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–366–012]

Florida Gas Transmission Company; Notice of Compliance Filing

February 1, 2000.

Take notice that on January 27, 2000, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet, to become effective March 1, 2000:

Twenty-Ninth Revised Sheet No. 8A.01

FGT states that on August 5, 1997, FGT filed a Stipulation and Agreement of Settlement (Settlement) in Docket Nos. RP96–366, *et al.* resolving all issues in this rate proceeding. Pursuant to Article XIII, the Settlement became effective upon the first day of the first month following the issuance of a final Commission order. On September 24, 1997, the Commissiion issued an order approving the Settlement. Because no party requested rehearing as of October 24, 1997, the Settlement became effective November 1, 1997.

FGT states that the Settlement, among other provisions, provided that the Rate Schedule FTS–2 rates for transportation service through FGT's incremental expansion capacity would be tiered the filed rate would be effective from March 1, 1997 through February 28, 1999 with decreases becoming effective March 1, 1999 and March 1, 2000. Tariff Sheet 8A.01, which contains the Rate Schedule FTS–2 rates, reflected the Settlement rates for all three periods for FTS–2 service, with the decreases becoming effective March 1, 1999 and March 1, 2000 contained in a footnote.

FGT states that it is making the instant filing to replace the FTS–2 rates which are effective from March 1, 1999 through February 28, 2000 with the reservation and usage rates which become effective March 1, 2000. The reservation and usage rates which become effective March 1, 2000 are contained in footnote 1 on the currently effective sheet No. 8A.01.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–2659 Filed 2–4–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–169–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

February 1, 2000.

Take notice that on January 28, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective March 1, 2000.

Natural states that the purpose of this filing is to implement a new Rate Schedule FRSS, under which Natural would provide a firm "reverse" storage service. Although this new service is available to all customers, it is primarily designed to meet the needs of the electric generation market during the summer peak period for electric demand. This new service mirrors some of the fundamental elements of Natural's Rate Schedule DSS, but with injection and withdrawal seasons reversed. Both are delivered firm storage services with no-notice delivery rights, but Rate Schedule DSS primarily supports traditional winter withdrawals for customers with peak demand in the heating season. By contrast, all withdrawals under new Rate Schedule FRSS must be made during the summer and would be followed by winter injections. Natural also states that conforming tariff changes have also been made in the General Terms and Conditions in its Tariff.

Natural requests waiver of the Federal Energy Regulatory Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective March 1, 2000.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest 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 202–2087–2222 for assistance).

David P. Boergers,
Secretary.
[FR Doc. 00–2653 Filed 2–4–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–977–000]

Potomac Electric Power Company; Notice of Filing

February 1, 2000.

Take notice that on January 19, 2000, Potomac Electric Power Company tendered for filing a correction to Amendment No. 1 to its electric service agreement with Southern Maryland Electric Cooperative, Inc.

The requested effective date of January 1, 2000, for Amendment No. 1, a rate reduction was not changed.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 11, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–2661 Filed 2–4–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–710–000, ER00–741–000, and ER00–744–000]

Southaven Power, LLC, Canal Emirates Power International, Inc., PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, and PPL Susquehanna, LL; Notice of Issuance of Order (Not consolidated)

February 1, 2000.

Southaven Power, LLC, Cannal Emirates Power International, Inc., PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, and Susquehanna, LLC (hereafter , "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On January 27, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's January 27, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants 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.

(3) Absent request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities. . . .

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 28, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. This issuance 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. 00–2613 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–005]

TransColorado Gas Transmission Company; Notice of Tariff Filing

February 1, 2000.

Take notice that on January 28, 2000, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fifth Revised Sheet No. 20, with an effective date of February 1, 2000.

TransColorado states the filing is being made in compliance with the Commission's January 14, 2000, Order on Uncontested Settlement in Docket Nos. RP99–106–000 and –004 (the January 14 order). In the January 14 order, the Commission accepted the Interim Rates reflected on Sheet No. 20 to be effective February 1, 2000, as provided by Section II.A.6.b of the November 4, 1999, settlement that states Interim Rates will "be in effect, subject to refund under § III.F.1 below, as maximum filed rates from the first day of the month following the date the Settlement is approved by the Commission until February 1, 2001."

TransColorado states that a copy of this filing has been served upon parties to the proceeding TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ww.fer.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2660 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–85–000, et al.]

North Hartland, LLC, et al.; Electric Rate and Corporate Regulation Filings

January 31, 2000.

Take notice that the following filings have been made with the Commission:

1. North Hartland, LLC

[Docket No. EG00–85–000]

Take notice that on January 27, 2000, North Hartland, LLC filed with the Federal Energy Regulatory Commission and application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

North Hartland, LLC will be engaged exclusively in the business of owning the North Hartland Hydroelectric Project and selling electricity at wholesale. It will make wholesale sales to various entities. The North Hartland Project is a 4,000 kW hydroelectric facility completed in 1985, and located in the Town of Hartland, Vermont.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Tacoma Energy Recovery Company

[Docket No. EG00–86–000]

Take notice that on January 27, 2000, Tacoma Energy Recovery Company filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935. The applicant, a corporation organized under the laws of the State of Delaware, will be engaged directly and exclusively in operating a 50 MW generating station in Tacoma, Washington and selling electric energy at wholesale.

Comment date: February 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. First Electric Cooperative Corporation

[Docket No. EL00–37–000]

Take notice that on January 27, 2000, First Electric Cooperative Corporation (First Electric) tendered for filing a Request For Waiver of Requirements of Order Nos. 888 and 889 and Certain Other Commission Regulations.

Comment date: February 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. TransCanada Power (a Division of TransCanada Energy Ltd.)

[Docket No. ER95–692–019]

Take notice that on January 14, 2000, TransCanada Power filed their quarterly report for the quarter ending December 31, 1999, for information only.

5. Conoco Power Marketing Inc.; CSW Energy Services, Inc.

[Docket Nos. ER95–1441–020, ER98–2075–008]

Take notice that on January 20, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. NESI Power Marketing, Inc.

[Docket No. ER97–841–012]

Take notice that on January 21, 2000, NESI Power Marketing, Inc. filed their quarterly report for the quarter ending December 31, 1999, for information only.

7. APS Energy Services; ProLiance Energy, LLC; CHI Power Marketing, Inc.

[Docket Nos. ER99–4122–002, ER97–420–013, ER96–2640–013]

Take notice that on January 19, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

8. Kincaid Generation L.L.C.; Yadkin, Inc.

[Docket Nos. ER00–1213–000, ER00–1214–000]

Take notice that on January 24, 2000, the above-mentioned affiliated power producers and/or public utilities filed their quarterly reports for the quarter ending December 31, 1999.

Comment date: February 22, 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, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–2648 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–035, North Carolina]

Yadkin, Inc., Notice of Availability of Draft Environmental Assessment

February 1, 2000.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for the Yadkin Hydroelectric Project located on the Yadkin-Pee Dee River in Montgomery, Stanly, Davidson and Rowan Counties, North Carolina. The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Commission staff believe the SMP would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA can be viewed on the web at *www.ferc.fed.us/online/rims.htm.* Call (202) 208–222 for assistance. Copies are also 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.

Anyone may file comments on the DEA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed within 60 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the project number P–2197–035 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Oral comments on the DEA will be taken by Commission staff at a public meeting to be scheduled in the vicinity of the Yadkin Project. The exact date, time and location of the public meeting have not yet been determined. Commission staff will issue a separate notice when the exact date, time and location of the public meeting are finalized. If you have any questions regarding this notice, pleas call Steve Hocking at (202) 219–2656.

David P. Boergers,

Secretary.

[FR Doc. 00–2650 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 2, 1000.

The following Notice of Meeting is published pursuant to Section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 9, 2000, 10: A.M.

PLACE: Room 2C 888 First Street, N.E., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE —Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items, stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 734th—Meeting February 9, 2000, Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–2170, 011, Chugach Electric Association, Inc.
CAH–2.
Docket# P–13, 010, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
Other#s P–2047, 006, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2060, 007, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2084, 022, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2318, 006, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2320, 017, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2330, 036, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2474, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2482, 024, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2539, 010, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2554, 007, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2569, 047, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2616, 012, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2641, 004, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2645, 080, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2696, 013, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.

P–2701, 032, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2713, 045, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–2837, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–3452, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–5984, 028, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7320, 012, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7321, 009, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7387, 008, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–7518, 003, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–9222, 018, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–10461, 005, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–10462, 005, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
P–11408, 022, Niagara Mohawk Power Corporation and Erie Boulevard Hydropower, L.P.
CAH–3.
Docket# P–4797, 056, Cogeneration, Inc.

Consent Agenda—Electric

CAE–1.
Docket# ER00–798, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
Other#s ER99–4235, 000, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation
CAE–2.
Docket# ER00–870, 000, PJM Interconnection, L.L.C.
CAE–3.
Docket# ER00–845, 000, Southern California Edison Company
Other#s ER00–860, 000, San Diego Gas & Electric Company
ER00–851, 000, Pacific Gas and Electric Company
CAE–4.
Docket# ER00–839, 000, Southwest Power Pool, Inc.
CAE–5.
Docket# ER00–586, 000, Madison Gas & Electric Company
Other#s ER00–816, 000, Ameren Services Company
ER00–840, 000, Tenaska Alabama Partners, L.P.
ER00–891, 000, Delano Energy Company, Inc.
ER00–895, 000, Onodago Cogeneration Limited Partnership
CAE–6.
Docket# ER00–886, 000, New York State Reliability Council
CAE–7.
Docket# ER99–3886, 001, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–8.
Docket# ER00–879, 000, California Independent System Operator Corporation
CAE–9.
Docket# ER00–749, 000, ISO New England, Inc.
CAE–10.
Docket# ER00–894, 000, Geysers Power Company, LLC
CAE–11.
Docket# ER00–799, 000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana
CAE–12.
Docket# ER97–412, 000, Firstenergy Corporation
Other#s ER97–412, 001, Firstenergy Corporation
ER97–413, 000, Firstenergy Corporation
ER98–1932, 000, Firstenergy Corporation
CAE–13.
Docket# ER00–898, 000, Amergen Energy Company, L.L.C.
Other#s ER99–754, 000, Amergen Energy Company, L.L.C.
EL00–30, 000, Amergen Energy Company, L.L.C.
ER00–899, 000, Jersey Central Power & Light Company
CAE–14.
Docket# OA97–523, 000, Upper Peninsula Power Company
Other#s OA97–676, 000, Upper Peninsula Power Company
CAE–15.
Docket# ER00–298, 001, PJM Interconnection, L.L.C.
CAE–16. Omitted
CAE–17. Omitted
CAE–18.
Docket# EL99–17, 000, The Ameren Companies
Other#s EL98–1, 000, The Ameren Companies
CAE–19.
Docket# EG00–54, 001, Tenaska Alabama Partners, L.P.

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP00–162, 000, Panhandle Eastern Pipe Line Company
CAG–2.
Docket# RP00–163 000, Kern River Gas Transmission Company
RP00–163, 001, Kern River Gas Transmission Company
CAG–3.
Docket# RP00–164, 000, Northern Natural Gas Company
CAG–4.
Docket# RP00–166, 000, CNG Transmission Corporation
Other#s RP00–74, 001, CNG Transmission Corporation
RP00– 74, 002, CNG Transmission Corporation
CAG–5.
Docket# PR00–4, 000, PG&E Gas Transmission TECO, Inc.
CAG–6.
Docket# RP93–5, 034, Northwest Pipeline Corporation
Other#s RP93–96, 013, Northwest Pipeline Corporation
CAG–7.
Docket# TM00–1–30, 001, Trunkline Gas Company
CAG–8.
OMITTED
CAG–9.
Docket# RP94–72, 011, Iroquois Gas Transmission System, L.P.
Other#s RP94–72, 009, Iroquois Gas Transmission System, L.P.
FA92–59, 007, Iroquois Gas Transmission System, L.P.
RP97–126, 015, Iroquois Gas Transmission System, L.P.
RP97–126, 000, Iroquois Gas Transmission System, L.P.
CAG–10.
Docket# CP88–391, 024, Transcontinental Gas Pipe Line Corporation
Other#s RP93–162, 009, Transcontinental Gas Pipe Line Corporation
CAG–11.
Docket# PR95–18, 001, Duke Energy Intrastate Network, L.L.C.
CAG–12.
Docket# OR99–4, 001, Sinclair Oil Corporation v. Platte Pipe Line Company
CAG–13.
Docket# RP99–274, 003, Kern River Gas Transmission Company
CAG–14.
Docket# RP99–496, 002, Southern Natural Gas Company
CAG–15.
Docket# OR89–2, 000, Trans Alaska Pipeline System
CAG–16.
Docket# MG00–1, 000, Clear Creek Storage Company, L.L.C.
CAG–17.
Docket# CP99–322, 000, El Paso Natural Gas Company
Other#s CP99–323, 000, El Paso Natural Gas Company
CAG–18.
Docket# CP96–53, 000, NE Hub Partners, L.P.
Other# s CP96–53, 006, NE Hub Partners, L.P.
CP96–53, 009, NE Hub Partners, L.P.
CP96–53, 010, NE Hub Partners, L.P.
CAG–19.
Docket# CP96–610, 003, Granite State Gas Transmission, Inc
Other#s CP99–238, 000, Granite State Gas Transmission, Inc.
CAG–20.
Docket# PL99–3, 001, Certification of New Interstate Natural Gas Pipeline Facilities
CAG–21.
Docket# RM–5, 000, Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act

Hydro Agenda

H–1. Reserved

Electric Agenda

H–1. Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1A.
Docket# RM98–10, 000, Regulation of Short-Term Natural Gas Transportation Services
Other#s RM98–12, 000, Transportation Services Final rule
PR–1B.
Docket# RM96–14, 003, Secondary Market Transactions on Interstate Natural Gas Pipelines
Other#s RM94–10, 000, Petition of United Distribution Companies for Rulemaking Regarding The Secondary Market
RM96–7, 000, Regulation of Negotiated Transportation Services of Natural Gas Pipelines
RM96–352, 002, Transwestern Pipeline Company, Pacific Gas and Electric Company and Southern California Gas Company
RP96–353, 001, National Fuel Gas Distribution Company
RP96–355, 001, Columbia Gulf Trnsmission Corporation
RP96–356, 001, Columbia Gas Transmission Company
RP96–360, 001, Transcontinental Gas Pipe Line Corporation
RP96–368, 001, Washington Gas Light Company
RP96–369, 001, Brooklyn Union Gas Company
RP96–370, 001, Kern River Gas Transmission Company
RP96–371, 001, Central Hudson Gas Electric Corporation
RP96–372, 001, Mountaineer Gas Company
RP96–373, 001, Boston Gas Company
RP96–379, 001, Arizona Public Service Company
RP96–382, 001, Orange and Rockland Utilities, Inc.
RM98–11, 000, Rate Design for Interstate Natural Gas Pipelines Order on Proceedings

II. Pipeline Certificate

PC–Reserved

David P. Boergers,

Secretary.

[FR Doc. 00–2753 Filed 2–3–00; 10:57 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

February 1, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

EXEMPT

1. CP98–150–000 and CP98–151–000	1–7–00	Steven C. Resler.
2. CP98–150–00 and CP98–151–000	1–12–00	Douglas P. Mackey.
3. CP99–94–000	1–7–00	Wayne E. Daltry.
4. Project No. 77–110	1–14–00	Rodney R. McInnis.
5. Project Nos. 10100–004 and 10416–007	12–20–99	Gerry A. Jackson.
6. CP00–14–000	12–28–99	George C.J. Craciun.
7. CP00–14–000	1–14–00	Tina & Lee Windschitl.
8. Project No. 372–008	1–21–00	Erik T. Ostly.
9. CP00–14–000	12–17–99	Karen Skinner.
10. CP00–14–000	12–7–99	Barry Campbell.
11. CP00–14–00	1–6–00	Barry Campbell.
12. CP00–14–000	1–10–00	Brian O'Higgins.

David P. Boergers,

Secretary.

[FR Doc. 00–2649 Filed 2–4–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6534–1]

Regulatory Reinvention (XL) Pilot Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of Elmendorf Air Force Base Project XL Final Project Agreement and related documents.

SUMMARY: EPA is announcing the signing of the Project XL Final Project Agreement (FPA) for Elmendorf Air Force Base (EAFB).

DATES: The FPA was signed on December 15, 1999.

ADDRESSES: To obtain a copy of the Final Project Agreement, Fact Sheet, or public comments received, contact: Dave Bray, Office of Air Quality, OAQ–107, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, or L. Nancy Birnbaum, U.S. EPA, 401 M Street, SW,

Room 1025WT (1802), Washington, DC 20460. The documents are also available via the Internet at the following location: "http://www.epa.gov/ProjectXL". In addition, public files on the Project are located at EPA Region X in Seattle. Questions to EPA regarding the documents can be directed to Dave Bray at (206) 553–4253 or L. Nancy Birnbaum at (202) 260–2601. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at "http://www.epa.gov/ProjectXL'.

SUPPLEMENTARY INFORMATION: The FPA is a voluntary agreement developed by EAFB, stakeholders, the State of Alaska, and EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated sources the flexibility to develop alternative strategies that will replace or modify specific regulatory requirements on the condition that they produce greater environmental benefits.

On November 5, 1999, EPA announced the availability of the draft FPA in the **Federal Register** (64 FR 60443) and requested comments. As a result of that announcement, EPA received one comment from the Trustees for Alaska. The comment and EPA's response to it are available from the contacts listed in the **ADDRESSES** section and on the Project XL website at http://www.epa.gov/ProjectXL. No other comments were received.

The project will streamline the application, implementation, management, and renewal process for EAFB's Title V permit, through reduced scope of applicability, monitoring, and recordkeeping. EAFB estimates that total monitoring, recordkeeping, reporting, and overall management costs would decrease by about 80 percent, yielding about $1.5 million in savings. These realized cost savings will be directed toward pollution prevention (P2) opportunities. One such P2 project involves installation of a compressed natural gas (CNG) fueling station, the purchase of new CNG vehicles, and the conversion of certain base fleet vehicles to be capable of using CNG as an alternative fuel. Any additional cost savings will be applied to another pollution prevention project(s) agreed to by the parties. A list of additional feasible projects available at EAFB has been developed, along with the estimated costs and environmental benefits of each. While this list focuses primarily on hazardous air contaminant reduction projects, EAFB will hold at least one public meeting to discuss these and other possible pollution prevention opportunities. Upon concurrence of the parties, a supplemental agreement will be developed, setting forth the project(s) selected and any necessary measures to assure their performance.

Dated: January 11, 2000.

Richard T. Farrell,

Associate Administrator, Office of Reinvention.

[FR Doc. 00–2715 Filed 2–4–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 00–169]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On February 3, 2000, the Commission released a public notice announcing the February 22 and 23, 2000, meeting and agenda of the North American Numbering Council (NANC). For reasons described below, a portion of the meeting will be closed to the public on Wednesday, February 23, from 8:30 a.m. until 11 a.m. The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: February 3, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, February 22, 2000, from 8:30 a.m. until 5 p.m., and on Wednesday, February 23, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC.

The meeting is to be held on Tuesday, February 22, 2000 from 8:30 a.m. until 5 p.m., and Wednesday, February 23, 11 a.m. until 12 noon meeting segment are open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT** stated above.

It has been determined that the portion of the meeting to be held on Wednesday, February 23, 2000 from 8:30 a.m. until 11 a.m. will be closed to the general public. In response to NANC Chairman John R. Hoffman's request, after review by the General Counsel, FCC Chairman William E. Kennard, has determined that this portion of the February 23, 2000, meeting of the NANC may be closed to the public. In making this determination, Chairman Kennard stated: Given that the NANC's review, at the meeting, of the proposal by NeuStar, Inc., to provide number pooling administration is likely to involve disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential, that portion of the NANC meeting is subject to the Government in Sunshine Act's (GISA) allowance for closure of meetings otherwise required to be open to the public. See GISA Section 552b(c)(4). Under the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988) (FACA), the requirement that Federal Advisory Committee meetings be open to the public is, therefore, not applicable to the above-specified portion of the February 23, 2000 meeting of the NANC.

Proposed Agenda—Tuesday, February 22, 2000

1. Approval of January 18–19, 2000, meeting minutes.
2. North American Numbering Plan Administration (NANPA) Report.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Local Number Portability Administration (LNPA) Working Group Report.
6. Cost Recovery Working Group Report.
7. Industry Numbering Committee (INC) Report.

8. Assumptions Issue Management Group workplan and timeline.

9. Oversight update regarding Limited Liability Corporations (LLCs) and the regional Number Portability Administration Centers (NPACs).

10. North American Numbering Plan Administration Billing and Collection Agent (NBANC) Update.

Wednesday, February 23, 2000

11. Number Pooling Issue Management Group (IMG) Report. Final report and recommendation regarding the NeuStar, Inc., response to the NANC Thousand Block Pooling Administrator Requirements Document. Report from the Legal Expertise Working Group on their review of the NeuStar response. The NANC will finalize its recommendation to be forwarded to the Federal Communications Commission's, Chief, Common Carrier Bureau for consideration. This presentation and discussion will take place during the 8:30 a.m. until 11 a.m., segment of the meeting and will be closed to the general public.

12. Steering Group Report.

13. Other Business.

Federal Communications Commission.

Diane Griffin Harmon,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 00–2752 Filed 2–4–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2386]

Petitions for Reconsideration of Action in Rulemaking Proceeding

January 31, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 22, 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: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143)

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–2647 Filed 2–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on information collected and maintained on students attending National Fire Academy (NFA) and Emergency Management Institute (EMI) courses.

SUPPLEMENTARY INFORMATION: Public Law 93–498, Federal Fire Prevention and Control Act, as amended, established the National Fire Academy (NFA) to "advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities * * *" and authorizes the Superintendent, NFA , to "conduct courses and programs of training and education * * *" Public Law 100–707, Robert T. Stafford Disaster Relief and Emergency Assistance Act, authorizes the President to establish "a program of disaster preparedness that utilizes services of all appropriate agencies and includes * * * (2) training and exercises * * *" Under the authorities of Executive Order 12127 and 12148, the Director, Federal Emergency Management Agency, is responsible for carrying out the mandates of the public laws mentioned above. The director established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland, which houses the NFA and the Emergency Management Institute (EMI). The data collection is used to: (1) Determine eligibility for courses and programs offered by NFA and EMI, (2) provide a consolidated record of all FEMA training taken by a student, (3) provide a transcript which can be used by the student in requesting college credit or continuing education units for courses completed, and (4) to determine eligibility for student stipends.

Collection of Information

Title: General Admissions Application and General Admissions Application Short Form.

Type of Information Collection: Extension.

OMB Number: 3067–0024.

Form Numbers: FEMA Form 75–5, General Admissions Application and FEMA Form 75–5a, General Admissions Application Short Form.

Abstract: NFA and EMI (located at the National Emergency Training Center (NETC) in Emmitsburg, Maryland) use FEMA Forms 75–5, General Admissions Application, and 75–5a, General Admissions Application Short Form, to admit applicants to resident courses and programs offered at NETC, Mount Weather Emergency Assistance Center (MWEAC) and various locations throughout the United States. Information from the application forms is maintained in the Admissions System. The system:

(1) Provides a consolidated record of all FEMA training taken by a student;

(2) Identifies or verifies participation in any prerequisite course;

(3) Produces a transcript which can be used by the student in requesting college credit or continuing education units for courses completed;

(4) Provides statistical information to members of Congress, members of the respective Boards of Visitors, sponsoring states or local officials; and (5) Determines which students receive stipends for attending NFA or EMI courses.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or tribal government.

Estimated Total Annual Burden Hours:

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
75–5	40,000	1	9 minutes	6,000
75–5a	25,000	1	6 minutes	2,500
Total	65,000			8,500

Estimated Cost: Costs include data entry contract at $125,000, 50% of the annual salary cost of three full-time personnel working in the NETC Admissions Office (GS6, GS7, and GS11) at approximately $70,000, printing at $500 per year. Total average estimated cost to Federal Government is $195,500 annually.

Comments

Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received on or before April 7, 2000.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Darlyn Vestal, Admissions Specialist, Educational and Technology Services Branch, U.S. Fire Administration, (301) 447–1415 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: January 24, 2000.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–2664 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Request for Site Inspection, Landowners Authorization/Ingress/Egress Agreement.

Type of Information Collection: Reinstatement without change of a previously approved collection.

OMB Number: 3067–0222.

Abstract: Public Law 93–288, as amended by Public Law 100–707, the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Section 408, authorizes the Federal Emergency Management Agency (FEMA) to provide Temporary Housing Assistance. Mobile homes, travel trailers, or other forms of readily fabricated housing are used to provide housing to eligible victims of federally declared disasters. The collection of this information is required to determine the site feasibility for the placement of a temporary housing unit on the land, and rights of ingress and egress for the unit. FEMA Form 90–1, Request for Site Inspection, is designed to ensure sites for temporary housing units will accommodate the home and comply with local, State and Federal regulations regarding the placement of the temporary housing units; FEMA Form 90–31, Landowner's Authorization/Ingress-Egress Agreement, ensures the landowner (if other than the recipient of the home) will allow the temporary housing unit to be placed on the property; and ensure that routes on ingress and egress to and from the main property are maintained.

Affected Public: Individuals or households.

Number of Respondents: 1,000.

Estimated Time per Respondent: 10 minutes for each form.

Estimated Total Annual Burden Hours: 333.

Frequency of Response: On Occasion.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524.

Dated: January 13, 2000.

Mike Bozzelli,

Acting Director Program Services Division, Operations Support Directorate.

[FR Doc. 00–2665 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: Capability Assessment for Readiness (CAR).

Type of Information Collection: Reinstatement with change of previously approved collection for which approval has expired.

OMB Number: 3067–0272.

Abstract: The CAR is needed by FEMA to determine that current capabilities of the States to respond to

major disasters and emergencies. It is also an essential means of reporting to the United States Congress and the President on the degree to which States, as primary recipients of FEMA grants, are capable of performing their emergency management responsibilities. The CAR provides a mechanism to evaluate the effectiveness of FEMA programs that are designed to help States attain a high level of achievement in mitigation, preparedness response and recovery programs. It can be used by States for: (1) Developing strategic planning initiatives; (2) producing annual work plans for Federal grants based on areas requiring improvement that are identified in the CAR; (3) providing a basis for budget submissions to State legislatures; and (4) modifying CAR to establish an instrument to assess the capabilities of local jurisdictions.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 60 hours.

Estimated Total Annual Burden Hours: 3,360 hours.

Frequency of Response: Biennially.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: January 28, 2000.

Muriel B. Anderson,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–2666 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1310–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1310–DR), dated January 10, 2000, and related determinations.

EFFECTIVE DATE: January 24, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 2000:

Hancock and Henderson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–2668 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1248–DR]

U.S. Virgin Islands; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the U.S. Virgin Islands (FEMA–1248–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: January 20, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 20, 2000, the President concurred with the Director's recommendation to adjust the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), and the Insular Areas Act (10 U.S.C. 1469a(d) in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in the U.S. Virgin Islands, resulting from Hurricane Georges on September 19–22, 1998, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements for Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act").

Therefore, I concur with your recommendation to amend my declaration of September 24, 1998 to authorize Federal funds for the Individual and Family Grant, Public Assistance, and Hazard Mitigation Grant Programs at 90 percent of total eligible costs.

Please notify the Federal Coordinating Officer of this amendment to my major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 00–2667 Filed 2–4–00; 8:45 am]

BILLING CODE 6718–02–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.

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 March 2, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Davis Trust Financial Corporation, Elkins, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Davis Trust Company, Elkins, West Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. TransAtlantic Holding Corp., Miami, Florida; to become a bank holding company by acquiring up to 100 percent of the voting shares of TransAtlantic Bank, Coral Gables (Miami), Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., Lansing, Michigan; Sun Community Bancorp Limited, Phoenix, Arizona; and Nevada Community Bancorp Limited, Las Vegas, Nevada; to acquire 51 percent of the voting shares of Black Mountain Community Bank (in organization), Henderson, Nevada.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Wells Fargo & Company, San Francisco, California; to acquire 100 percent of the voting shares of Michigan Financial Corporation, Marquette, Michigan, and thereby indirectly acquire MFC First National Bank, Marquette, Michigan; MFC First National Bank, Minominee, Michigan; MFC First National Bank, Ironwood, Michigan; MFC First National Bank, Iron River, Michigan; MFC First National Bank, Iron Mountain, Michigan; MFC First National Bank, Houghton, Michigan; and MFC First National Bank, Escanaba, Michigan.

In connection with this application, Applicant also has applied to acquire Michigan Financial Life Insurance Company, Marquette, Michigan, and thereby engage in underwriting life insurance and accident and health insurance that is directly related to an extension of credit by the bank holding company organization, pursuant to § 225.28(b)(11) of Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2616 Filed 2–4–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Northern Star Financial, Inc., Mankato, Minnesota; to acquire First Federal Holding Company of Morris, Inc., Morris, Minnesota, and thereby indirectly acquire First Federal Savings Bank, Morris, Minnesota, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y; providing securities brokerage, pursuant to § 225.28(b)(7)(i) of Regulation Y; providing insurance directly related to an extension of credit by the bank holding company or any of its subsidiaries, pursuant to § 225.28(b)(11)(i) of Regulation Y; and engaging in general insurance agency activity in a place with a population of less than 5,000, pursuant to § 225.28(b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, February 1, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–2617 Filed 2–4–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; NCI Cancer Information Service Demographic/Customer Service Data Collection

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: NCI Cancer Information Service Demographic/Customer Service Data Collection. *Type of Information Collection Request:* Revision of a currently approved collection. OMB control number 0925–0208, expiration date July 31, 2000. *Need and Use of Information Collection:* The CIS provides the general public, cancer patients, families, health professionals, and others with the latest information on cancer. Essential to providing the best customer service is the need to collect data about callers and how they found out about the service. This effort involves asking three questions to 100% of five categories of callers for an annual total of approximately 333,620 callers and four questions to 50% of the same five categories of callers for an annual total of approximately 166,810 callers.

Frequency of Response: One time. *Affected Public:* Individuals or households. *Type of Respondents:* Patients, relatives, friends, and general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 333,620 for three questions and 166,810 for four questions; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .0033 for 3 questions and .0083 for 4 questions; and *Estimated Total Annual Burden Hours Requested:* 2,479. The annualized cost to respondents is estimated at: $29,748. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals or households				
—3 questions	333,620	1	.0033	1,094
—4 questions	166,810	1	.0083	1,385
Total				2,479

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Chris Thomsen, Chief, Cancer Information Service Branch, Office of Cancer Information, Communication, and Education, National Cancer Institute, NIH, Building 31, Room 10A16, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–5583 ext. 239 or E-mail your request, including your address to: *thomsenc@mail.nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before April 7, 2000.

Dated: January 28, 2000.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 00–2629 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cooperative Research and Development Agreement (CRADA) To Undertake Research and Development of a Corticotropin Releasing Factor (CRF) Antagonist(s) for the Treatment of Cocaine Dependence

AGENCY: National Institute of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institute on Drug Abuse (NIDA), a component of the National Institutes of Health, is seeking proposals from potential collaborators for a Cooperative Research and Development Agreement (CRADA) to test, by scientific means meeting U.S. Food and Drug Administration (FDA) standards, the hypothesis that Corticotropin Releasing Factor (CRF) antagonists may be useful in the treatment of cocaine dependence. NIDA will consider proposals from all qualified entities and will, subject to negotiation of a mutually agreed upon research plan, provide substantial in kind clinical and preclinical resources with the understanding that the CRADA collaborator will be free to utilize data from the CRADA to pursue regulatory filings in the U.S. and abroad. Subject to negotiation of details in a mutually agreed upon research plan, NIDA will provide the CRADA collaborator with access to its preclinical development components and clinical trials contractual network. No NIH funding may be provided to a collaborator under a CRADA, therefore the collaborator will bear the financial and organizational costs of meeting its obligations under the research plan. It is NIDA's intention to provide, at a minimum, clinical trials services sufficient to permit, subject to FDA approval, research and development up to and including Phase II hypothesis testing trials. Assuming demonstration of safety and efficacy at the conclusion of Phase II trials and subject to negotiation, NIDA will consider undertaking Phase III trials sufficient to permit collaborator to seek a U.S. New Drug Approval (NDA).

DATES: NIDA will consider all proposals received within 90 days of the date of publication of this notice. This notice is active until May 8, 2000.

ADDRESSES: Questions about this notice may be addressed to Mr. Lee Cummings (301–443–1143) or Dr. Frank Vocci (301–443–2711) at the following address: Division of Treatment Research and Development, National Institute on Drug Abuse, 6001 Executive Boulevard, MSC 9551, Bethesda, Maryland 20892–9551.

SUPPLEMENTARY INFORMATION: There is mounting evidence that drugs of abuse effect the brain systems mediating the stress response. Evidence suggests that withdrawal syndromes associated with chronic use of drugs of abuse results in elevations of Corticotropin Releasing Factor (CFR) levels. The effects of chronic opiate and cocaine abuse in human subjects have been studied. Investigators have reported derangements of the stress response, even long after cessation of drug use. Taken together, these results would suggest a role of the CRF system in acute and, possibly, protracted abstinence. A role of stress in relapse to drugs of abuse is strongly suspected.

Stress has been shown to modify the intake of drugs of abuse in preclinical studies of drug self-administration. The effect of stress to increase drug intake has been shown for opiates and cocaine. Moreover, the effects of stress can be mimicked by CRF administration and inhibited by CRF antagonists. The inhibitory effect of CRF antagonists on stress-induced increases in drug-taking behavior is impressively robust. Hence,

further study of the modulation of stress responses by CRF antagonists in drug dependent and formerly dependent subjects and the possible relationship to reduction of drug use or prevention of relapse is a high priority for NIDA.[1] NIDA does not currently own or have access to a CRF antagonist with which to undertake this line of research and development. To this end, NIDA is seeking collaborations with pharmaceutical partners to evaluate CRF antagonists in drug dependent and formerly drug dependent subjects. NIDA is seeking to enter into a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical company or its license, the purpose of which would be to assess the effects of CRF antagonists in drug dependent populations. NIDA is willing to provide both intellectual expertise and preclinical and clinical support in a collaboration. While NIDA would prefer to enter into a CRADA with a company or licensee that is already in clinical testing phase with a CRF antagonist, it would also entertain collaborations involving drug candidates in the preclinical stage of testing. NIDA's Medications Development Program possesses the capacity to perform pharmacological and toxicological testing, pharmacokinetics, dosage form development and clinical testing from Phase I through Phase III testing and is willing to apply these capacities in the assessment of a CRF antagonist.

Selection factors of importance of NIDA include:

(1) It is mandatory that the collaborator have proprietary rights to the CRF antagonist sufficient to permit research and commercial development for the intended field of use, i.e., treatment of cocaine dependence. In the event the collaborator does not own the CRF antagonist, collaborator must provide appropriate documentation of a commercialization license to the field of use sufficient to permit the CRADA to proceed. Collaborator must be able to supply dosage forms of a CRF antagonist made to FDA Good Manufacturing Practices (GMP) standards sufficient to permit each stage of research and development to proceed.

(2) NIDA will consider the amount of research and development documentation and experience already in the collaborator's possession. NIDA will sign appropriate confidential disclosure agreements in order to review proprietary and unpublished data. While NIDA will consider all proposals, it will give a higher priority to proposals that can document a more advanced level of development with the proposed CRF antagonist.

(3) NIDA will consider the amount and type of research and development resources the collaborator proposes to undertake as part of a proposed CRADA.

(4) NIDA will consider the background, experience, and expertise in medications development of the proposed collaborator.

Dated: February 1, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–2628 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

[1] A review of the scientific literature on stress, drugs of abuse, and relapse to drug use is available upon request.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: February 10, 2000.

Time: 2:00 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Sybil A. Wellstood, PHD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

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. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2625 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commrcial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: February 28–29, 2000.

Open: February 28, 2000, 8:30 AM to 3:00 PM.

Agenda: Discussion of matters of program relevance.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Closed: February 28, 2000, 3:00 PM to Adjournment on Tuesday, February 29, 2000.

Agenda: to review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1&E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Elke Jordan, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS.

DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2626 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 15–17, 2000.

Time: 8:30 AM to 6 PM.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 30037.

Contact Person: Lawrence E. Chaitkin, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2623 Filed 2–4–00; 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 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 pubic 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: February 1, 2000.

Time: 9 AM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@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.

(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: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2624 Filed 2–4–00; 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 disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 1, 2000.

Time: 11:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Edmund Copeland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7804, Bethesda, MD 20892, (301) 435–1715.

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: Infectious Diseases and Microbiology Initial Review Group Bacteriology and Mycology Subcommittee 2.

Date: February 9–10, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

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: February 9–10,2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gamil C. Debbas, 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: Integrative, Functional, and Cognitive Neuroscience Initial Review Group Visual Sciences B Study Section

Date: February 9–10, 2000.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Leonard Jakubczak, 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: February 9, 2000.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@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: February 9, 2000.

Time: 6:00 PM to 7:30 PM.

Agenda: To review and evaluate grant applications.

Place: LaJolla Cove Suites, La Jolla, CA 92037.

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, lrosen@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: February 9, 2000.

Time: 7:30 PM to 9:30 PM.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cove Suites, La Jolla, CA 92037.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@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: Endocrinology and Reproductive Sciences Initial Review Group, Biochemical Endocrinology Study Section.

Date: February 10, 2000.

Time: 8:00 AM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC 20037.

Contact Person: Michael Knecht, 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: Surgery, Radiology and Bioengineering Initial Review Group Diagnostic Imaging Study Section.

Date: February 10–11, 2000.

Time: 8:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: La Jolla Cove Suites, La Jolla, CA 92037.

Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

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: Biophysical and Chemical Sciences Initial Review Group, Molecular and Cellular Biophysics Study Section.

Date: February 10–11, 2000.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hotel de La Poste, 316 Chartres Street, New Orleans, LA 70130.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

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: February 10–11, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Lameridia Hotel, New Orleans, LA 70130.

Contact Person: Mary Custer, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164.

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: Surgery, Radiology and Bioengineering Initial Review Group Diagnostic Radiology Study Section.

Date: February 10–11, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: St James Hall, La Jolla, CA 92037.

Contact Person: Eileen W. Bradley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, bradleye@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: Cardiovascular Sciences Initial Review Group Hematology Subcommittee 1.

Date: February 10–11, 2000.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

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: February 10–11, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Michael J. Kozak, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

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: February 10–11, 2000.

Time: 9 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

Contact Person: Thomas A. Tatham, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@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: February 13, 2000.

Time: 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

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: Pathophysiological Sciences Initial Review Group, General Medicine A Subcommittee 2.

Date: February 14–15, 2000.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Mushtaq A. Khan, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, khanm@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: February 14, 2000.

Time: 8:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Dharam S. Dhindsa, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

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: Endocrinology and Reproductive Sciences Initial Review Group, Reproductive Endocrinology Study Section.

Date: February 14–15, 2000.

Time: 8:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Abubakar A. Shaikh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

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: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 3.

Date: February 14–15, 2000.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.

Contact Person: Christine Melchior, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

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: Health Promotion and Disease Prevention Initial Review Group Nursing Research Study Section.

Date: February 14–16, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Getrude McFarland, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

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: Musculoskeletal and Dental Sciences Initial Review Group General Medicine A Subcommittee 1.

Date: February 14–15, 2000.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Harold M. Davidson, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, davidsoh@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: Endocrinology and Reproductive Science Initial Review Group Endocrinology Study Section.

Date: February 14–15, 2000.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Syed M. Amir, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, amirs@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: Surgery, Radiology and Bioengineering Initial Review Group Surgery, Anesthesiology and Trauma Study Section.

Date: February 14–15, 2000.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Mirage I Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Gerald L. Becker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170.

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. 93.306, 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: January 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–2627 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Glycoprotein Hormone Superagonists

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. 09/185,408 filed May 6, 1996 entitled "Glycoprotein Hormone Superagonists", to EndocrinoLogiz, Inc., having a place of business in Princeton, NJ 08542. The contemplated exclusive license may be limited to use for human therapeutics and diagnostics. The United States of America is the assignee of the patent rights in this invention.

This announcement replaces an earlier **Federal Register** notice (64 FR 38685, July 19, 1999) which is hereby withdrawn.

DATES: Only written comments and/or application for a license which are

received by the NIH Office of Technology Transfer on or before April 7, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Charles Maynard, 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. 243; Facsimile: (301) 402–0220; e-mail: CM251N@NIH.GOV.

SUPPLEMENTARY INFORMATION: This invention relates generally to modified glycoprotein hormones and specifically to modifications to a human glycoprotein, which create superagonist activity. Glycoprotein hormones comprise a family of hormones, which are structurally related heterodimers consisting of a species common α sub-unit and a distinct β sub-unit that confers the biological activity for each hormone. However, this invention is not limited to specific hormones, specific subjects such as humans as well as non-humans mammals, specific amino acids, specific clinical conditions, specific analogs, or specific methods.

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: February 1, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–2630 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Nitroxides as Protectors Against Oxidative Stress and in the Prophylactic and Therapeutic Treatment of Aging, Obesity and Cancer

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. 07/494,532, filed March 16, 1990, entitled "Nitroxide as Protectors Against Oxidative Stress" and U.S. Patent Application Serial No. 60/047,724 filed May 27, 1997 entitled," The use of Nitroxides in the prophylactic and therapeutic treatment of cancer due to genetic defects" and corresponding foreign patent applications to Mitos, Inc., having a place of business in San Diego, California. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to the use compounds and methods disclosed and claimed in the invention for the prevention and treatment of obesity, cancer and the amelioration of the direct effects of aging.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 8, 2000, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquires, comments and other materials relating to the contemplated license should be directed to: Norbert J. Pontzer, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7736, ext. 284; Facsimile: (301) 402–0220; E–mail: np59n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: New metal-independent nitroxide compounds are anti-oxidants capable of protecting cells, tissues, and organs against the harmful effects of toxic oxygen related species (hydroxyl radical, hydrogen peroxide, superoxide). The toxic oxygen related species have been implicated in cancer and aging. These nitroxides slow the death rate in experimental animals with cancers caused by deletion of the p53 suppressor gene. These nitroxides also cause weight loss in mice with no apparent toxicity.

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 90 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: January 31, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–2631 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Nitroxides as Protectors Against Oxidative Stress and the Prophylactic and Therapeutic Treatment Radiation Damage to Normal Tissue

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This 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. 07/494,532, filed March 16, 1990, entitled "Nitroxides as Protectors Against Oxidative Stress" and U.S. Patent Application Serial No. 60/047,724 filed May 27, 1997 entitled,

"The use of Nitroxides in the prophylactic and therapeutic treatment of cancer due to genetic defects" and corresponding foreign patent applications to Varian Biosynergy, Inc., having a place of business in Palo Alto, California. The patent rights in these inventions have been assigned to the United States of America.

The contemplated exclusive license may be limited to use of topical or local tissue application of compounds disclosed and claimed in the invention for the protection of normal tissue against radiation damage caused by radiation therapy of diseased tissue.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before May 8, 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: Norbert J. Pontzer, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7736, ext. 284; Facsimile: (301) 402–0220; E-mail: np59n@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: Effective radioprotective drugs could significantly improve the therapeutic ratio of radiation therapy by protecting normal tissues and allowing greater doses of radiation to be delivered to the tumor. One approach to avoid protecting the tumor is local application of the radioprotective drugs to adjacent health tissue. The patent applications claim a new class of metal independent nitroxide compounds that appear capable of protecting tissue against radiation damage if clinically useful, non-toxic formulations that deliver sufficient local tissue concentrations can be developed.

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 90 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 contemplating 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: January 31, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–2632 Filed 2–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Prepare an Environmental Assessment for the Conversion of a Portion of Strawberry Valley Project Water From Irrigation to Municipal and Industrial Use

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Assessment for the conversion of a portion of Strawberry Valley Project (SVP) water from irrigation to other beneficial uses including municipal and industrial (M&I) use.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Department of the Interior, Central Utah Project Completion Act Office will prepare an Environmental Assessment on the conversion of SVP water from agricultural to municipal and industrial use.

The SVP, authorized December 15, 1905, is one of the earliest Reclamation Projects. The SVP water from the Colorado River Basin is stored in the enlarged Strawberry Reservoir. The SVP water is then conveyed through the Diamond Fork System into the Great Basin where it is delivered through natural stream courses to the Spanish Fork River diversion structure and into the Strawberry Power Canal. The SVP service area is located in south Utah County, Utah. The Strawberry Water Users Association is responsible for the operation and maintenance of the SVP and contractually uses Central Utah Project (CUP) facilities to store and convey SVP water.

Suburban development in the SVP service area has resulted in agricultural land being taken out of production, annexed into the cities, and developed into residential areas. Under the authority of the Water for Miscellaneous Purposes Act of 1920 (43 U.S.C. 521), the Secretary of the Interior has authority to approve converting a portion of the SVP water from irrigation to M&I use. This conversion will: (1) authorize the conversion of SVP water from irrigation to M&I use; (2) ensure the orderly marketing of CUP and SVP M&I water; (3) provide an adequate water supply to the cities; (4) generate revenue to fund the rehabilitation of SVP facilities; and (5) eliminate unauthorized use of SVP water within the service area. Of the total SVP annual average water supply of about 71,000 acre-feet, approximately 10,200 acre-feet has already been converted and an additional 1,800 acre-feet will be converted from irrigation to M&I use in the foreseeable future with the opportunity to gradually convert additional amounts as growth continues in the area.

The Environmental Assessment will identify potential effects of the proposed action and determine whether those effects are significant. Alternatives identified at this time include the proposed action and the no action alternatives. Issues to be analyzed include impacts on wildlife, cultural resources, special status plants and animals, and water resources.

DATES: Public scoping comments relating to issues and potential additional alternatives will be accepted for 30 days following the publication of this notice.

FOR FURTHER INFORMATION: Scoping comments should be sent to: Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154.

Comments, including names and street addresses of respondents will be available for public review at the CUP Completion Act Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Assessment and other related documents.

Dated: February 1, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–2640 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–RK–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Steilacoom Tribe of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary proposes to determine that the Steilacoom Tribe of Indians, c/o Mrs. Joan Ortez, P.O. Box 419, Steilacoom, Washington 98388 does not exist as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the tribe does not satisfy all of the criteria set forth in 25 CFR 83.7 and, therefore, does not meet the requirements for a government-to-government relationship with the United States.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner. Names and addresses of commenters on the proposed finding are generally available under the Freedom of Information Act.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research. Mail Stop 4660–MIB.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Steilacoom Tribe of Indians (STI) asserted that it was eligible for consideration under 25 CFR 83.8 as the continuation of the Steilacoom band which signed the Treaty of Medicine Creek on December 24, 1854, and that the Steilacoom were recognized as a tribe by the Federal Government in the 1930's. The evidence did not show that the STI descends from the "Steilacoom" group which was a party to the treaty. In addition, the evidence demonstrated that the Steilacoom organizations of the 1920's and 1930's were dealt with only for the purpose of prosecuting claims against the Federal Government. Therefore, because the petitioner did not provide substantial evidence of unambiguous prior Federal acknowledgment, the STI petition has been evaluated under the provisions of 25 CFR 83.7. The STI meets criteria 83.7(d), 83.7(f), and 83.7(g), but does not meet 83.7(a), 83.7(b), 83.7(c), and 83.7(e).

Criterion 83.7(a) requires that the petitioner have been identified as an American Indian entity on a substantially continuous basis since 1900. For the period from 1900 through 1925, the evidence did not show any external identifications of an existing Steilacoom Indian entity. In 1925, seven people described in BIA minutes as "Steilacoom Indians" attended a claims meeting. The claims group appeared in BIA records through the late 1930's. There was also an effort in the later 1930's to organize a Steilacoom Tribe of Public Domain Indians of Washington under the IRA. There were no Federal identifications of any Steilacoom entity between 1941 and 1951. Federal identifications of the claims organization resumed in 1951 and continued until the final judgment award in 1974. In 1953, it was included on the list of groups with which the BIA discussed proposed termination legislation.

In 1952, a longtime local resident of the Steilacoom, Washington, area, testified on behalf of the claims organization that she could still identify a Steilacoom tribe. During the 1950's and 1960's, the State of Washington Department of Fisheries recognized the BIA "blue cards" issued to persons listed on the rolls of claims organizations. On this basis, an official of the Washington State Game Department stated in 1971 that he considered the STI as a bonafide tribe representing a continuation of the historical Steilacoom band.

The evidence in the record for this proposed finding did not include any other identifications of an existing Steilacoom entity in local newspapers, by local or regional historians, or in scholarly works for the period prior to the 1970's. In February 1974, the Steilacoom Indian Tribe incorporated within the State of Washington as a nonprofit organization. From 1974 to the present, the Steilacoom Tribe of Indians has regularly been identified as a non-recognized Indian tribe by Federal and State agencies, in newspaper articles, by local historians, and by scholars.

The evidence was not adequate to demonstrate that STI has been identified as an American Indian entity on a substantially continuous basis for the entire period since 1900. The STI does not meet criterion 83.7(a).

Criterion 83.7(b) requires that a predominant portion of the petitioning community comprise a distinct community and have existed as a community from historical times until the present. The petitioner did not demonstrate any of the five forms of evidence listed under 83.7(b)(2) at any point in time since the beginning of sustained contact with non-Indian settlers.

Section 83.7(b)(1)(iii) states that a petitioner may show significant rates of informal social interaction which exist broadly among the members of a group. In order for this to occur, there must first be a group. The evidence showed that the ancestors of the current STI membership did not, historically, constitute a group whose history could be traced through time and place. The petitioner's ancestors in the 19th century consisted of several different categories of unconnected people (see discussion below under criterion 83.7(e)).

The evidence did not demonstrate that persons from any one of these different categories regularly interacted either with persons from other categories or with persons identified in the historical record as Steilacoom Indians (83.7(b)(1)(ii)). The petitioner did not show significant rates of marriage within the group at any time since record keeping began in the mid-19th century (83.7(b)(1)(i)). From first sustained contact with non-Indians until the present, the ancestral families and current members of the STI have intermarried primarily with non-Indians.

There was no evidence that there was a significant degree of shared or cooperative labor or other economic activity among STI ancestral families in the past (83.7(b)(1)(iv)). Participation by STI members in commercial fishing in the 1970's was by invitation of federally acknowledged tribes, and did not involve a significant degree of shared or cooperative labor among the STI membership. For the modern period, the evidence showed that there was intra family social and economic interaction, but little interfamily association. The petition contained no evidence of patterns of institutionalized discrimination or other social distinctions by nonmember either in the past or in the present (83.7(b)(1)(v)). There was no evidence that the ancestral families or current members of the STI had any shared sacred or ritual activity, or cultural patterns, that encompassed most of the groups (83.7(b)(1)(vi) and (vii)).

Section 83.7(b)(1)(viii) lists one possible form of evidence for

community as: "[t]he persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes in name." There was no named, collective identity between 1854 and 1925. At different times during the 1925–1941 period, two Steilacoom claims organizations existed. There are no membership lists of these organizations. Therefore, it was not possible to determine to what extent, if any, the petitioner's ancestors identified with either or both, or to what extent the membership of the earlier period overlapped with that of the post-1951 group, the petitioner. Regardless, these organizations did not continue for a period of 50 years. There was an approximate 65 percent overlap between the 1950's lists and the lists for the group from the mid-1970's to the present. The STI incorporated in 1974 and has existed continuously since that date. The identity asserted by the formal organization of a group is entitled to weight as representing the views of the membership. However, the existence of a formal organization is not in itself sufficient evidence to show collective group identity.

The evidence in the record was not sufficient to demonstrate the existence of community from historical times to the present. The STI does not meet criterion 83.7(b).

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present. The evidence in the record does not show the post-treaty existence of an autonomous Steilacoom band. The STI petition did not present the types of evidence described under 83.7(c)(2). The evidence in the record under 83.7(c)(1) did not demonstrate the exercise of political authority of influence over the petitioner's ancestors as a group, whether as members of a "Steilacoom" entity or any other entity. The individual extended ancestral families of the modern STI, throughout the second half of the 19th century and first quarter of the 20th century were not connected with one another in such a way as to permit any kind of bilateral political relationship.

Because there was no identifiable entity in the later 19th and early 20th centuries, there were no identifiable group leaders or governing bodies prior to 1925. In so far as the petition mentioned individual 19th century Steilacoom Indians as leaders, there was no evidence that most STI ancestral families associated with them. In so far as it mentioned identified STI ancestors as leaders, there was no evidence that their influence extended beyond their own family line.

There was very little evidence concerning mobilization of resources from members of family lines ancestral to the STI for any common purposes from the mid-19th century until the formation of the Steilacoom claims organization in 1925. Since the membership of the Steilacoom claims organization in the 1920's and 1930's is unknown, there was no evidence to show the level of support provided by its members even for this limited function. There was no data indicating that there were any common purposes among the STI ancestral families other than the prosecution of claims prior to the development of concern over fishing rights in the 1950's.

For the modern period, approximately 30 out of 612 members attend meetings. Other STI activities such as work toward Federal acknowledgment and representational and educational activities directed at the wider community have been conducted primarily by a small group of members. There was very little evidence concerning communication between leaders and members and the minutes provided little data concerning internal conflicts, if any, and their resolution. The STI does not meet criterion 83.7(c).

Criterion 83.7(d) requires that the petitioner provide copies of the group's current constitution and by-laws. The STI meets criterion 83.7(d).

Criterion 83.7(e) states that the petitioner's membership must consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Of the 612 STI members, only three from one nuclear family have been documented as descendants of persons who, in the 19th century and first quarter of the 20th century, were identified as Steilacoom Indians. The 91 per cent of the current STI members for whom the petitioner submitted data descend primarily from two other categories of Indian ancestors.

Just under two-thirds descend from Indian women who, between 1839 and 1870, married men who had recently come to the region of Fort Nisqually in Pierce County and Cowlitz Prairie in Lewis County, most as employees of the Hudson's Bay Company (HBC). The petition asserted that these Indian women were Steilacoom and that they maintained their Steilacoom tribal affiliation. Contemporary records did not verify this assertion. Their children and grandchildren described them variously as Nisqually, Puyallup, Cowlitz, Clallam, Chimacum, Quinault, Duwamish, Skokobish, Yakima, and Snohomish in affidavits made between 1910 and 1918. None of these affidavits described an ancestress as Steilacoom.

The other one-third of the STI members with documented Indian ancestry trace their lineage to Canadian Indian tribes through Red River metis families from Manitoba. The petition asserted that these Red River families were adopted, sometimes by way of intermarriage, into a continuously existing Steilacoom tribe during the second half of the 19th century. However, the few documented intermarriages did not take place between Red River immigrants and Steilacoom Indians. Rather, they took place between Red River immigrants and the non-Steilacoom Indian/HBC descendant families described above.

The identified STI ancestral family lines can all be documented to the mid-19th century, but the limited documentation available concerning the claims organization did not indicate that a significant proportion of the families were associated with the Steilacoom claims organization of the 1920's and 1930's. The family lines adopted into the STI in the 1950's included families whose Indian ancestry was Cowlitz, Cowlitz/Quinault, Lummi, Red River, and Colville, and who were previously unconnected with one another. Thus, although the petitioner's membership consists of Indian descendants, it does not consist of "individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous entity." The STI does not meet criterion 83.7(e).

Criterion 83.7(f) states that the petitioner's membership must be composed principally of persons who are not members of any acknowledged North American Indian tribe. The STI meets criterion 83.7(f).

Criterion 83.7(g) states that neither the petitioner nor its members can have been the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The STI meets criterion 83.7(g).

Based on this preliminary factual determination, the Steilacoom Tribe of Indians should not be granted Federal acknowledgment under 25 CFR Part 83.

As provided by 25 CFR 83.10(h) of the revised regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and other interested parties, and is available to other parties upon written request. Comments on the proposed finding and/or requests for a copy of the report of evidence should be

addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 4660–MIB. Comments on the proposed finding should be submitted within 180 calendar days from the date of publication of this notice. Third party comments must be provided to the petitioner as well as to the Federal Government. After the close of the 180-day comment period, the petitioner has 60 calendar days to respond to third-party comments.

After the expiration of the comment and response periods described above, the BIA will consult with the petitioner concerning establishment of a time frame for preparation of the final determination. After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after beginning preparation of the final determination, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1).

Dated: January 14, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–2635 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–220–1020XQ]

Call for Nominations for Northwest and Front Range Resource Advisory Councils (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The purpose of this notice is to solicit nominations from the public to fill positions which have recently been vacated on two Colorado, Bureau of Land Management (BLM), Resource Advisory Councils.

These councils provide advice and recommendations to BLM on management of the public lands. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Under Section 309 of FLPMA the Secretary has selected 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council will reflect a balanced membership representative of the various interests concerned with the management of public lands and users of the public lands.

The position to be filled on the Northwest Resource Advisory Council is Public-at-Large in Group 3.

The position on the Front Range Resource Advisory Council which is being filled is also Public-at-Large in Group 3. Nominees must be residents of Colorado. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed Nomination/Background Information Form, as well as any other information that speaks to the nominee's qualifications.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the appropriate office on or before March 23, 2000.

ADDRESSES: For more information and a Nomination/Background Information Form, contact the appropriate BLM office:

Northwest Resource Advisory Council—Bureau of Land Management, Northwest Center, Attn: RAC Nomination, 2815 H Road, Grand Junction, Colorado 81506.

Front Range Resource Advisory Council—Bureau of Land Management, Front Range Center, Attn: RAC Nomination, 3170 East Main Street, Canon City, Colorado 81212.

Completed Nomination/Background Forms should be returned to the appropriate address listed above.

FOR FURTHER INFORMATION CONTACT: Ken Smith (719) 269–8553; for information about the Front Range Resource Advisory Council or Lynn Barclay (970) 826–5096 for information about the Northwest Resource Advisory Council.

SUPPLEMENTARY INFORMATION: Individuals may nominate themselves or others. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making.

Dated: January 29, 2000.

John Carochi,

Acting Front Range Center Manager.

[FR Doc. 00–2701 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1820–XQ]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management Northeast California Resource Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Public Law 94–579), the U. S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Friday, March 10, 2000, at the Bureau of Land Management's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA.

SUPPLEMENTARY INFORMATION: The meeting begins at 8 a.m. in the Eagle Lake Field Office Conference Room. Agenda items include an update on Grass Banking, a status report on a proposal to list the sage grouse under the Endangered Species Act, and a report from the council's off highway vehicle working group. The council will also hear reports on the status of a proposal to designate a National Conservation Area is parts of the Black Rock Desert and High Rock Canyon, and other proposals for special area designations. Time will be set aside on the agenda for public comments.

FOR FURTHER INFORMATION CONTACT: Contact BLM Alturas Field Manager Tim Burke at (530) 257–4666.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 00–2683 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–0777–XQ–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Southwest Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in March, 2000 in Paonia, CO.

DATES: The meeting will be held on Thursday, March 9, 2000.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Southwest Center, 2465 South Townsend Avenue, Montrose, CO 81401; phone 970–240–5335; TDD 970–240–5366; e-mail Roger_Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The March 9, 2000 meeting will be held at the Paonia Senior Citizens Center, 106 Third Street, Paonia CO. The meeting will begin at 9:00 a.m. and end no later than 4:30 p.m. The agenda will include updates on the North Fork Coal Leasing EIS, the Gunnison Gorge and Anasazi Heritage Center recreation fee demonstration projects, the proposed recreation fee for Yankee Boy Basin, Colorado's RACs' proposed recreation guidelines and the Anasazi Area of Critical Environmental Concern. A presentation on the Delta-Montrose Public Lands Partnership proposed Uncompahgre Plateau project is also scheduled. General public comment is scheduled for 9:15 a.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo_sw_rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: January 31, 2000.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 00–2685 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–ET; NMNM 102308]

Public Land Order No. 7427; Withdrawal of Public Lands and Federal Minerals for the Carlsbad Cave and Karst Area; New Mexico; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 7427, 65 FR 2423–2424, published January 14, 2000, as FR Doc. 00–937.

On page 2423, third column, paragraph 1, under the total areas described, which reads "8,970.59 acres in Eddy County," is hereby corrected to read "8470.59 acres in Eddy County."

Dated: January 27, 2000.

Carsten F. Goff,

Deputy State Director.

[FR Doc. 00–2698 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–1430–ET; NMNM 42909, et al.]

Public Land Order No. 7416; Revocation of Executive Orders Dated June 24, 1914, April 28, 1917, February 11, 1918, July 10, 1919, May 25, 1921, and February 7, 1930, and Partial Revocation of Executive Order Dated April 17, 1926; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This order corrects Public Land Order No. 7416, 65 FR 67295–67297, published December 1, 1999, as FR Doc. 99–31202. .

On page 67297, in the first column, under T. 24 S., R. 15 W., remove sec. 5, lot 1 and SE¼NE¼, and after T. 24 S., R. 15 W., sec. 23, NE¼NW¼, add T. 24 S., R. 15 E., sec. 5, lot 1 and SE½NE¼.

Dated: January 28, 2000.

Carsten F. Goff,

Deputy State Director.

[FR Doc. 00–2699 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–ES; COC–49757]

Notice of Realty Action—Fremont and Chaffee Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: In notice document 99–12127 beginning on page 25902 in the issue of May 13, 1999, the legal descriptions of two of the public land parcels (known as the Collegiate Peaks Gateway, Chaffee County and Point Bar, Fremont County) classified for Recreation and Public Purposes lease should be corrected to read:

Sixth Principal Meridian, Colorado

T. 14 S., R. 78 W., Section 23: E½NW¼SW¼, E½SW¼NW¼, west of Chaffee County Road 102 containing approximately 25 acres known as the Collegiate Peaks Gateway.

New Mexico Principal Meridian, Colorado

T. 49 N., R. 10 E., Section 28: That portion of Lots 2, 3, 6, 7, 10 and 11 lying north of U.S. Highway 50 right-of-way and south of the Union Pacific Railroad right-of-way containing approximately 37 acres known as Point Bar.

In notice document 99–8170 beginning on page 15988 in the issue of April 2, 1999, the legal description of the public land parcel in Chaffee County classified for Recreation and Public Purposes lease should be corrected to read:

New Mexico Principal Meridian, Colorado

T. 50 N., R. 8 E., Section 21: The northerly portion of the E½E½NE¼SE¼ lying east of Highway 285. Section 22: The northerly portion of the NW¼SW¼ containing approximately 18 acres known as Big Bend.

In notice document 89–12003 beginning on page 21677 in the issue of May 19 1989, the legal description of the public land parcel (known as the Spike Buck recreation site) classified for Recreation and Public Purposes lease should be corrected to read:

Sixth Principal Meridian, Colorado

T. 18 S., R. 72 W., Section 29: That portion of the NW¼NW¼NE¼ and the NE¼NE¼NW¼ between the thread of the Arkansas River and U.S. Highway 50 containing approximately 7 acres known as Spike Buck.

ADDRESSES: Field Office Manager, Royal Gorge Field Office, 3170 E. Main St., Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: David Hallock, Realty Specialist, Telephone (719)269–8536.

Dated: January 29, 2000.

Levi Deike,

Associate Field Office Manager.

[FR Doc. 00–2700 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CA–330–1220–AA

Resource Management Plan for Arcata Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of Supplementary Rule pertaining to all public lands managed by the Bureau of Land Management (BLM) in the areas known as the Samoa Dunes Recreation Area (T.5N., R.1W., Section 31; T.4N., R.1W., Section 6, Humboldt Meridian)

and the Manila Dunes Area of Critical Environmental Concern (ACEC) (T.6N., R.1W., Sections 26, 27, 34 and 35, Humboldt Meridian). Existing rules and regulations have been documented and previously published in the **Federal Register** and Code of Federal Regulations (CFR) and/or are approved in two land use plans that cover the areas: the *Record of Decision, Arcata Resource Area Resource Management Plan*, dated April, 1992 and the *Decision Record, Arcata Resource Area Resource Management Plan Amendment*, dated July, 1995. In accordance with approved land use plans and regulations contained in 43 CFR 8341.2, 43 CFR 8364.1 and 43 CFR 8365.1–6, the Manila Dunes ACEC is closed to all Off Road Vehicle (ORV) use. The Samoa Dunes Recreation Area is closed to all vehicle use one hour after sunset to one hour before sunrise; 175 acres are designated "closed" to all ORV use; 25 acres are designated "limited" to all ORV use; overnight camping is prohibited; and the 40-acre endangered plant protection area is closed to all public use. Vegetative gathering is prohibited between November 1 and May 1 of each year at both Samoa Dunes and Manila Dunes ACEC. The use of firearms and archery equipment are also prohibited in both areas. Employees, agents and permittees of the BLM may be exempt from these rules and regulations as determined by the authorized officer.

EFFECTIVE DATE: This notice is effective February 4. 2000, as all rules and regulations listed are already in effect.

ADDRESSES: Maps and other supporting documentation are available for review at the following location: Bureau of Land Management, Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Bruce Cann, Outdoor Recreation Planner or Michael Dodson, Law Enforcement Ranger, at the above address. Telephone (707) 825–2300.

SUPPLEMENTARY INFORMATION: The purpose of the existing rules and regulations is to preserve and protect rare and endangered plant and animal species, protect cultural resources, reduce conflicts among different types of recreation uses, and to protect public property and facilities. The purpose of this supplementary rule is to make permanent existing temporary emergency closures and to provide citation authority. Any person who fails to comply with this supplementary rules and regulations is subject to arrest and/or a fine of up to $100,000 and/or imprisonment not to exceed 12 months, sec 18 U.S.C. section 3571.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 00–2807 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OSC)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS minerals proposals of the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/Operator	Location	Date
Coastal Oil & Gas Corporation, Pipeline Activity, SEA No. P–12384 (G–21469).	Main Pass Area, Blocks 265, 264, 263, 280, and 281, Lease OCS–G 21469, 70 miles off the coast of Alabama.	01/07/00
Fugro GeoServices, Inc., G&G Activity, SEA No. M00–01	Bayou La Batre, Alabama to Piney Point in Tampa Bay, Florida	01/19/00
Coastal Oil & Gas Corporation, Structure Removal Operations, SEA No. ES/SR 99–129.	Main Pass Area, Block 243, Lease OCS–G 5726, 44 miles east of Plaquemines Parish, Louisiana.	11/03/99
Coastal Oil & Gas Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–130, 99–131, 99–142, and 99–143.	Main Pass Area, Blocks 244, 227, and 265, Leases OCS–G 5727, 6825, and 4834, 47 miles east of Plaquemines Parish, Louisiana.	11/01/99
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 99–135.	West Cameron Area, Block 607, Lease OCS–G 10602, 111 miles south of Cameron Parish, Louisiana.	10/22/99
Prime Natural Resources, Inc., Structure Removal Operations, SEA No. ES/SR 99–136.	Eugene Island Area, Block 196, Lease OCS–G 0802, 43 miles southwest of Terrebonne Parish, Louisiana.	10/15/99
Chevron U.S.A. Inc., Structure Removal Operations, SEA No. ES/SR 99–137.	Main Pass Area, Biock 42, Lease OCS–G 1367, 19 miles east of Plaquemines Parish, Louisiana.	10/22/99
Chevron U.S.A. Inc., Structure Removal Operations, SEA Nos. ES/SR 99–138 and 99–139.	Eugene Island Area, Blocks 229 and 230, Leases OCS–G 5505 and 0979, 46 miles southwest of Terrebonne Parish, Louisiana.	11/01/99
Marathon Oil Company, Structure Removal Operations, SEA Nos. ES/SR 99–140 and 99–141.	East Cameron Area, Block 313, Lease OCS–G 8656, 95 miles south of Cameron Parish, Louisiana.	10/22/99
Fairways Specialty Sales and Service, Inc., Structure Removal Operations, SEA No. ES/SR 99–144.	Galveston Area, Block A–34, Lease OCS–G 12514, 35 miles southeast of Brazoria County, Texas.	10/27/99
Murphy Exploration & Production Company, Structure Removal Operations, SEA No. ES/SR 99–145.	Matagorda Island Area, Block 710, Lease OCS–G 10205, 30 miles east of Aransas County, Texas.	10/09/99
Ocean Energy, Inc., Structure Removal Operations, SEA No. ES/SR 99–146.	Eugene Island Area, Block 119, Lease OCS–G 0049, 23 miles southwest of Terrebonne Parish, Louisiana.	11/09/99
Samedan Oil Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–147 and 99–148.	Grand Isle Area, Block 79, Lease OCS–G 5657, Vermilion Area, Block 162, Lease OCS–G 5419, 40 miles from the nearest shoreline offshore the Louisiana Coast.	12/14/99
Ocean Energy, Inc., Structure Removal Operations, SEA No. ES/SR 99–149.	Eugene Island Area, Block 119, Lease OCS–G 0049, 23 miles southwest cf Terrebonne Parish, Louisiana.	12/30/99

Activity/Operator	Location	Date
Range Resources Corporation, Structure Removal Operations, SEA Nos. ES/SR 99–150 and 99–151.	Mustang Island Area, Block 847, Lease OCS–G 6011, 24 miles Offshore Kleberg County, Texas.	12/30/99

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: January 31, 2000.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 00–2639 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Request for Information and Interest in a Commercial Sand and Gravel Lease Sale Offshore Northern New Jersey

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Change starting time for information meeting.

SUMMARY: The information meeting scheduled to be held in Bradley Beach, New Jersey, on February 28, 2000, will begin at 7:30 p.m., and not 7:00 p.m., as previously announced in the **Federal Register** at Vol. 65, No. 6, Page 1413, "Outer Continental Shelf Request for Information and Interest in a Commercial Sand and Gravel Lease Sale Offshore Northern New Jersey."

FOR FURTHER INFORMATION CONTACT: Carol A. Hartgen, Chief, International Activities and Marine Minerals Division, (703) 787–1300.

Dated: February 1, 2000.

Carol A. Hartgen,

Chief, International Activities and Marine Minerals Division, Minerals Management Service.

[FR Doc. 00–2622 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Two Invitations for Bids on Natural Gas from Federal Properties in the Gulf of Mexico

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Invitations for Bids on Federal Royalty Gas.

SUMMARY: The Minerals Management Service has posted on MMS's Internet Home Page, and will make available in hard copy, public competitive offerings of approximately 490,000 mmBtu per day of natural gas, to be taken as royalty-in-kind from Federal properties in the Gulf of Mexico under two Invitations For Bids (IFB), Numbers MMS-RIK–2000-GOMR–002, and MMS-RIK–2000-GOMR–003.

DATES: The two IFBs were posted on MMS's Internet Home Page on January 21, 2000. Bids will be due to MMS at the posted receipt location on February 18, 2000. MMS will notify successful bidders on or about February 25, 2000. The Federal Government will begin actual taking of awarded royalty gas volumes for delivery to successful bidders for a 7-month period beginning on April 1, 1999.

ADDRESSES: The IFBs are posted on MMS's Home Page at http://www.mms.gov under the icon "What's New." The IFBs may also be obtained by contacting Mr. Michael Del-Colle at the address in the **FURTHER INFORMATION** section. Bids should be submitted to the address provided in the IFBs.

FOR FURTHER INFORMATION CONTACT: For additional information on MMS's RIK pilots, contact Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230,Washington DC 20240; telephone number (202) 208–3827; fax (202)208–3918; e-mail *Bonn.Macy@mms.gov*. For additional information concerning the IFB document, terms, and process for Federal leases, contact Mr. Michael Del-Colle, Minerals Management Service, MS-2510, 381 Elden Street, Herndon, VA 20170–4817; telephone number (703) 787–1375; fax (703) 787–1009; e-mail Michael.Del-Colle@mms.gov.

SUPPLEMENTARY INFORMATION: These offerings of natural gas continue MMS's RIK pilot program and will involve Federal properties in the Gulf of Mexico. MMS's objective is to identify the circumstances in which taking oil and gas royalties as a share of production is a viable alternative to its usual practice of collecting oil and gas royalties as a share of the value received by the lessee for sale of the production.

IFB Number MMS–RIK–2000–GOMR–002 offers approximately 280,000 mmBtu per day of natural gas from selected Federal properties located in the East Breaks, Garden Banks, High Island, East and West Cameron, and Vermillion areas of the Gulf of Mexico. This royalty gas flows through 88 facility measurement points (FMP's) on five pipeline systems—High Island/UTOS, ANR, Transco/NHIS, Pelican, and Stingray. This production was offered most recently October 8, 1999, under IFB No. RIK–2000–GOMR–001 for deliveries through March 31, 2000. Under terms of this new IFB, purchasers will, as before, take the royalty gas from these properties and locations near the lease and, in return, deliver a fixed daily volume of natural gas (based on monthly nominations) to the General Services Administration (GSA) at a specified location for GSA's use in managing supply commitments to Federal agency end users.

IFB Number MMS–RIK–2000–GOMR–003 offers an additional natural gas volume of approximately 210,000 mmBtu per day from selected Federal properties in the East and West Cameron, Garden Banks, Vermilion,

South Marsh, Ship Shoal and Eugene Island areas. This production flows through about 84 FMP's on the Sea Robin and Bluewater Pipeline systems. Successful bidders will be required to deliver production volumes to an onshore location; further disposition of these volumes will be announced at a later date.

Purchasers may bid on production from all FMPs on both pipelines, and/or for all FMPs on the Sea Robin Pipeline, and/or from all FMPs on individual segments of the Bluewater Pipeline.

The following are some of the additional details regarding the offerings that were posted to MMS's website as two IFB's on January 21, 2000.

- List of specific properties;
- For each property—FMP location and identification number, average daily royalty volume, 1-year production histories, quality, current operator; and other pipeline information.
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

Information on the internet posting and availability of the IFB in hard copy are being made available to oil and gas trade journals as well as in this **Federal Register** notice.

Dated: January 31, 2000.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 00–2598 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Director's Order Concerning Accessibility for Visitors With Disabilities in National Park Service Programs, Facilities and Services

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: The National Park Service (NPS) is updating its policies and procedural guidance concerning accessibility for visitors with disabilities in NPS programs, facilities and services. It is the goal of the NPS to ensure that all people, including the estimated 54 million citizens with disabilities, have the highest level of accessibility that is reasonable to our programs, facilities and services in conformance with applicable laws and regulations. Directors Order #42 establishes operational policies and procedural guidance concerning accessibility for visitors with disabilities in NPS programs, facilities and services.

DATES: Information from interested parties will be accepted until February 23, 2000.

ADDRESSES: Send information or suggestions to David Park, National Park Service, Park Facility Management Division, 1849 C Street, NW, Room 7252, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: David Park at 202/565–1255.

SUPPLEMENTARY INFORMATION: The NPS is converting and updating its current system of internal instructions to a three-level system consisting of: (1) NPS Management Policies; (2) Director's Orders; and (3) Reference Manuals/Handbooks and other helpful information. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, this information is being made available for public comment. Visitor accessibility policies were first addressed in Special Directive 83–3, issued in 1983. Those policies were subsequently updated in the 1988 NPS Management Policies. The five objectives of Director's Order #42 are to:

1. Institutionalize within the day-to-day operation of the NPS, the policies, organizational relationships and implementation strategies necessary to accomplish the long range goal of providing the highest level of accessibility that is reasonable for people with disabilities in all programs, facilities and services;
2. Provide further guidance and direction regarding the NPS interpretation of laws and policies;
3. Establish a framework for the effective implementation of actions necessary to achieve the highest level of accessibility that is reasonable;
4. Encourage the implementation of "universal design" principles within the NPS; and
5. Promote the infusion of access for persons with disabilities into the day-to-day operation of the NPS, rather than as a "separate" or "special" program.

Organizations and individuals with an interest in NPS policy and procedural guidance concerning accessibility for visitors with disabilities in NPS programs, facilities and services are invited to provide information or suggestions that should be considered by NPS during the review process. The proposed Director's Order #42 is posted at *http://www.nps.gov/refdesk/DOrders/index.htm#drafts*. If you are unable to access the Internet, and would like to receive a copy by mail, please contact David Park at the address given above.

Dated: February 1, 2000.

John Gingles,

Acting Chief, Park Facility Management Division.

[FR Doc. 00–2609 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Booker T. Washington National Monument Abbreviated Final General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of Booker T. Washington National Monument Abbreviated Final General Management Plan and Environmental Impact Statement.

SUMMARY: The National Park Service has prepared and released an Abbreviated Final General Management Plan and Environmental Impact Statement for the management, protection, use, and development of Booker T. Washington National Monument in Hardy, Virginia. A record of decision will be signed by the Regional Director, Northeast Region, National Park Service thirty days after this notice is published in the **Federal Register**. Copies of the Booker T. Washington National Monument Abbreviated Final General Management Plan and Environmental Impact Statement are available at Booker T. Washington National Monument and at the Franklin County Public Library in Rocky Mount, Virginia. The document can be viewed on the monument's web site (http://www.nps.gov/bowa).

For more information, contact the Superintendent, Booker T. Washington National Monument, 12130 Booker T. Washington Highway, Hardy, VA 24101–9688. The superintendent's phone number is 540–721–2094.

Dated: December 17, 1999.

Dale Ditmanson,

Associate Regional Director, Operations, NER.

[FR Doc. 00–2611 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation Draft Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Draft Environmental Impact Statement (DEIS) for the Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Glacier National Park, Montana.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a DEIS for the Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Glacier National Park, Montana.

DATES: The DEIS will remain available for public review through March 31, 2000. If any public meetings are held concerning the DEIS, they will be announced at a later date.

Comments

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Wastewater Project, Glacier National Park, West Glacier MT 59936. You may also comment via the Internet to *www.nps.gov/glac*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Wastewater Project" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Glacier National Park, (406) 888–7901. Finally, you may hand-deliver comments to Glacier National Park, Headquarters, West Glacier, MT. Our practice is to make comments, including names and home addresses of respondents available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

ADDRESSES: Copies of the DEIS for the Wastewater Project are available from the Superintendent, Glacier National Park, West Glacier Montana 59936. It is also available on the Internet at *www.nps.gov/glac*. Public reading copies of the DEIS will be available for review at the following locations:

Office of the Superintendent, Glacier National Park, West Glacier, MT 59936, Telephone: (406) 888–7901

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, P.O. Box 25287, Denver, CO 80225–0287, Telephone: (303) 969–2851 [or (303) 969–2377]

Office of Public Affairs, National Park Service, Department of Interior 18th and C Streets NW, Washington D.C. 20240, Telephone: (202) 208–6843

SUPPLEMENTARY INFORMATION: The Draft Environmental Impact Statement (DEIS) was prepared to address rehabilitation of the wastewater treatment system that currently serves the west side of Glacier National Park (Park). The service area for the existing wastewater treatment plant (WWTP) includes Park Headquarters and residences, campgrounds, Lake McDonald Lodge, and concession businesses and employee housing. The existing WWTP is no longer meeting its original treatment objective or operating at design capacity.The preferred alternative (Alternative 3) is to construct an advanced WWTP, with a land discharge site. This alternative would provide the greatest level of treatment and the highest water quality of the alternatives considered. Minimal new site disturbance would be necessary to implement the preferred alternative and the existing spray field in the floodplain of the Middle Fork of the Flathead River and McDonald Creek would no longer be used. Alternative 1A includes construction of an additional storage lagoon and a new spray field to discharge treated effluent. This would require clearing 6.5 hectares of undisturbed land and the existing spray field would continue to be used. Alternative 1B includes construction of two new storage lagoons and an additional aerated lagoon (3.6 hectares). The existing spray field would continue to be used. Alternative 2A includes construction of an advanced WWTP and a series of three rapid infiltration basins (3.6 hectares) to discharge treated effluent to the ground water. The existing spray field would no longer be used. The no action alternative (Alternative 4) would continue operation of the existing WWTP and spray field. Occasional raw sewage spills are possible when storage capacity is exceeded and the spray field cannot be operated because of wet conditions. The details of the alternatives and potential impacts to wildlife, vegetation, and threatened and endangered species and benefits to water quality and Park and concession operations are described in this document and are summarized in Table 2. Estimated costs to implement the alternatives are presented in Table 1.

FOR FURTHER INFORMATION CONTACT: Superintendent, Glacier National Park at the above address and telephone number.

Dated: January 28, 2000.

John A. King,

Director, Intermountain Region, National Park Service.

[FR Doc. 00–2612 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Thursday, March 2, 2000. The meeting will convene at 6:00 PM at the University Club, University of Massachusetts, 100 Morrissey Boulevard, Healey Library, 11th Floor, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from February 10, 2000

2. Present and review annual report

3. Nomination for Advisory Council seats.

4. Election of officers

5. Discussion on the draft General Management Plan

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, 02110, telephone (617) 223–8667.

Dated: January 24, 2000.

George E. Price, Jr.,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. 00–2610 Filed 2–4–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–427]

Certain Downhole Well Data Recorders and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 5, 2000, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Petroleum Reservoir Data, Inc., 700 W. 41st Ave., Suite 101, Anchorage, Alaska 99503. A supplement to the complaint was filed on January 28, 2000. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain downhole well data recorders and components thereof by reason of infringement of claims 1, 2 and 4 of U.S. Letters Patent 5,130,705. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1999).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 1, 2000, *ordered* that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain downhole well data recorders and components thereof by reason of infringement of claims 1, 2 or 4 of U.S. Letters Patent 5,130,705, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Petroleum Reservoir Data, Inc., 700 W. 41st Ave., Suite 101, Anchorage, Alaska 99503.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Spartek Systems, 4–4 Erickson Crescent, Sylvan Lake, Alberta T4S 1P5, Canada. Halliburton Company, 500 N. Akard, Suite 3600, Dallas, Texas 75201–3391.

(c) Juan Cockburn, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–Q, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Debra Morriss is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2695 Filed 2–4–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–96 and 439–445 (Review)]

Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, the United Kingdom, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

EFFECTIVE DATE: February 1, 2000.

FOR FURTHER INFORMATION CONTACT: John Fry (202–708–4157), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-

impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: Effective October 15, 1999, the Commission established a schedule for the conduct of the subject reviews (64 FR 57483, October 25, 1999). On January 19, 2000, counsel for Wolff Walsrode AG, a German producer, and Bayer Corporation, a German importer, requested a two-month extension of the schedule on the assumption that a decision may be made within that time frame by Hercules, the sole U.S. producer, as to whether it will close or sell its production facility. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675 (c)(5)(B), and is hereby revising its schedule.

The Commission's new schedule for the reviews is as follows: the prehearing staff report will be placed in the nonpublic record on May 18, 2000; the deadline for filing prehearing briefs is May 30, 2000; requests to appear at the hearing must be filed with the Secretary to the Commission not later than May 31, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 5, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 8, 2000; the deadline for filing posthearing briefs is June 19, 2000; the Commission will make its final release of information on July 13, 2000; and final party comments are due on July 17, 2000.

For further information concerning these reviews, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2697 Filed 2–4–00; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Commission Decision to Review An Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in its entirety a final initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., of Boise, Idaho ("complainant"). Respondents are Mosel Vitelic, Inc., of Hsinchu City, Taiwan and Mosel Vitelic Corp. of San Jose, California. The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 FR 51372 (1998).

The complaint alleged violations of section 337 in the importation, sale for importation, and sale after importation of certain semiconductor memory devices and products containing same that infringe claims of U.S. Letters Patents Nos. 5,514,245; 4,992,137; 4,436,584; and 5,486,129. *Id.* On May 17, 1999, the presiding administrative law judge (ALJ) granted complainant's motion for termination of the investigation as to the 245 patent. Complainant's current allegations of infringement concern 18 claims of the 137 patent, six claims of the 584 patent, and one claim of the 129 patent. An evidentiary hearing was held from May 19 through June 2, 1999.

The ALJ issued his final ID on November 29, 1999, concluding that there was no violation of section 337, based on the following findings: (a) complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct. On December 13, 1999, the ALJ issued his recommended determination on remedy and bonding, in the event the Commission concludes there is a violation of section 337.

On December 10, 1999, complainant filed a petition for review of the ID. The Commission investigative attorney (IA) also petitioned for review of the ID. On December 17, 1999, respondents and the IA filed responses to the petitions for review.

Having examined the record in this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in its entirety. The Commission has also determined to review two procedural issues: (1) whether the ALJ erred in considering respondents' inequitable conduct allegation that the inventors of the 137 patent intentionally concealed their best mode of practicing their invention; and (2) with respect to the 137 patent, whether the ALJ erred in admitting into evidence videotapes provided by an expert witness that were not made available to complainant until after that expert's deposition.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry that either are adversely affecting it or are likely to do so. For background information, see the

Commission Opinion, In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360.

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount to be determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions

The parties to the investigation are requested to file written submissions on the issues under review. The submission should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. Additionally, the parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's December 13, 1999, recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on February 15, 2000. Reply submissions must be filed no later than the close of business on February 22, 2000. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.45).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

Issued: February 1, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–2696 Filed 2–4–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Extension of Time To Submit Comments on Consent Decree Lodged Pursuant to Sections 104 and 107 of CERCLA

On December 1, 1999, the United States lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas, No. G–99–731, in *United States of America* v. *GAF Corp., et al.,* pursuant to Sections 104 and 107 of CERCLA, 42 U.S.C. 9604 and 9607. The proposed Consent Decree resolves civil claims of the United States against thirty-five *de minimis* generator Defendants for the Tex Tin Superfund Site located in Texas City and La Marque, Texas. The Defendants will pay a total of approximately $1.5 million in reimbursement of response costs at the Site.

On December 16, 1999 a Notice was published which advised that the Department of Justice would receive comments relating to the proposed Consent Decree for 30 days following publication of the Notice. Notice is hereby given that the period during which the Department of Justice will receive comments relating to the proposed Consent Decree has been extended at the request of a member of the public. The Department of Justice will continue to accept comments through the 30th day following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States of America* v. *GAF Corp., et al.,* DJ No. 90–11–3–1669/1. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, Houston, Texas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $14.75 for the Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–2702 Filed 2–4–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Imetal, DBK Minerals, Inc., English China Clays, PLC, and English China Clays, Inc.; Civil Action No. 99–1018 (GK)(D.D.C.); Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Public Comment and the Response of the United States have been filed with the United States District Court for the District of Columbia in United States v. Imetal, DBK Minerals, Inc., English China Clays, PLC, and English China Clays, Inc., Civil Action No. 99–1018 (GK)(D.D.C., filed April 26, 1999). On April 26, 1999, the United States filed a Compliant alleging that the proposed acquisition of English China Clays by Imetal would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time

as the Complaint, permits Imetal to acquire English China Clays, but requires that Imetal divest specified assets used in the manufacture and sale of kaolin, calcined kaolin, paper-grade ground calcium carbonate, and fused silica.

Public comment was invited within the statutory 60-day comment period. The one Comment received, and the Response thereto, have been filed with the Court and are hereby published in the **Federal Register**. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, Public Comment and the Response of the United States are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, N.W., Washington, D.C. 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

United States' Response to Comment Filed by Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE")

The United States of America hereby files with the Court the single written comment that it received in this case, and its response thereto, and states:

1. The Complaint in this case, the proposed Final Judgment, and the Hold Separate Stipulation and Order ("Stipulation") were filed on April 26, 1999. The United States' Competitive Impact Statement was filed on May 24, 1999.

2. Pursuant to 15 U.S.C. 16(b), the proposed Final Judgment, Stipulation, and Competitive Impact Statement were published in the **Federal Register** on June 11, 1999 (64 FR 31624–38).

3. Pursuant to 15 U.S.C. 16(c), a summary of the terms of the proposed Final Judgment and the Competitive Impact Statement were published in The Washington Post, a newspaper of general circulation in the District of Columbia, during the period May 27, 1999 through June 2, 1999.

4. The 60-day comment period specified in 15 U.S.C. 16(b) ended on August 10, 1999. The United States received a single written comment on the proposed settlement, from the Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE"), on August 10, 1999. A copy of that comment is attached as Exhibit 1.

5. Pursuant to 15 U.S.C. 16(d), the United States has considered and responded to that comment. A copy of the United States' response is attached as Exhibit 2.

6. The United States is making arrangements to have PACE's comment and the United States' response thereto published in the **Federal Register**, pursuant to 15 U.S.C. 16(d). As soon as that publication has been effected, the United States will notify the Court that it has complied with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(d), and that the Court may then enter the proposed Final Judgment after it determines that the Judgment serves the public interest.

Dated: January 14, 2000.

Respectfully submitted,

Patricia G. Chick, D.C. Bar #266403, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W. Suite 3000, Washington, D.C. 20530, Telephone: (202) 307–0946, Facsimile: (202) 514–9033, Attorney for Plaintiff the United States.

The Cuneo Law Group, P.C.

August 10, 1999.

Mr. J. Robert Kramer, II
Chief, Litigation II Section Antitrust Division United States Department of Justice

Re: *United States* v. *Imetal, DBK Minerals, Inc., English China Clays, PLC, and English China Clays, Inc., Civil No. 99–1018 (D.D.C.)*

Dear Mr. Kramer:

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), the Paper, Allied—Industrial, Chemical and Energy Workers International Union ("PACE") urges the Antitrust Division of the Department of Justice to give "due consideration" to these comments and to "withdraw its consent to the proposed Final Judgment" in this case. Competitive Impact Statement ("CIS") at 11.

Summary

Without remedial action, the Imetal/English China Clays ("ECC") merger will produce a combination of the only two producers in the Southeastern United States of ground calcium carbonate ("GCC") in slurry form for the paper industry, a key ingredient in paper-making. The Antitrust Division has already found that this combination will raise prices and reduce output. According to the Antitrust Division's Complaint in this case: "If the acquisition were permitted, Imetal would * * * have an interest in *all* of the paper grade GCC production capacity in the Southeastern United States" Complaint at 2 (emphasis added) The Complaint goes on to state; "[D]ue to the dominant position Imetal would have with respect to paper-grade GCC sold in the Southeastern United States * * * the threat of unilateral price increases * * * as a result of this acquisition is particularly high." *Id.* Left unchecked, the merger could well combine duopolists into monopolist.

Under the proposed consent decree, Imetal/ECC must spin off certain assets in the hope that another firm will have sufficient economic incentives to enter the market. Such speculative hopes will not substitute for adequate law enforcement. The Antitrust Division's proposed consent decree would allow the replacement of two existing competitors with a single more powerful competitor—and a competitor to be created, maybe. The replacement of two existing competitors with a monopolist and a potential competitor clearly violates Section 7 of the Clayton Act. Moreover, the CIS does not come close to providing enough information to evaluate whether it is in any sense realistic to expect that an effective second competitor will emerge.

Analysis

PACE came into being in January 1999 through the merger of the Oil, Chemical and Atomic Workers International Union and the United Paperworkers International Union. The antitrust interests of PACE in this transition are twofold. First, as a union of 330,00 members, PACE has a direct and substantial interest in the preservation of competitive market conditions. Because a monopolistic output restriction will constrict supply as well as raise prices, unions such as PACE, who are concerned about full employment, have a direct interest in preservation of competitive conditions in the paper industry. PACE represents approximately 125,000 workers in the forest products and paper industry who could be adversely affected by any monopoly constriction of supply. Part, but by no means all, of this concern stems from the fact that PACE Local 3–0516 represents approximately 140 employees at the Imetal-controlled Georgia Marble dry processing facility in Sylacauga, Alabama. Second, PACE and its members are purchasers of paper and paper supplies throughout the United States, including the Southeast, and therefore have a consumer interest in the preservation of a free and open market of all of the ingredients in the paper-making process.

As relevant here, the essential facts are as follows: GCC begins as calcium carbonate, which is found in marble or limestone deposits. Paper-making requires the brightest white GCC. High bright deposits are scarce, and some of the best are located in the Sylacauga area.

Once quarried, GCC is dry-processed through a series of screening and grinding steps into particles. Dry-processed GCC is then wet-processed and sold in slurry form to the paper-making industry. *See generally* CIS at 6. There are no ready substitutes. According to the CIS: "A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products." *Id.*; Complaint at 6.

Earlier this year, Imetal, SA, a large French company, made a cash tender offer of U.S. $1.24 billion to acquire English China Clays, PLC. Both companies have U.S. revenues in the hundreds of millions of dollars.

Imetal owns an American company, DBK Minerals, Inc., which owns Georgia Marble. Georgia Marble owns vast GCC reserves in Sylacauga, and owns and operates a facility to dry process GCC there. Georgia Marble is also a 50% partner in Alabama Carbonates, L.P., which wet processes GCC at a facility located next door to Georgia Marble's dry processing facility.

The acquired company, English China Clays, PLC, is a British firm that owns an American subsidiary, English China Clays, Inc. (referred to collectively as "ECC"). ECC owns and operates a fully integrated GCC mining and processing facility across the street from the Georgia Marble/Alabama Carbonates facilities in Sylacauga.

According to the Justice Department, Imetal and ECC are the *only* two suppliers of GCC to paper mills in the Southeastern United States. It bears repeating that the CIS makes clear that GCC is a product market unto itself: "A small but significant increase in the price of GCC would not cause a significant number of paper customers currently purchasing GCC for coating applications to substitute other products." CIS at 6.

The CIS also makes clear that GCC in the Southeastern United States is a geographic market: "Because of high transportation costs, sales of GCC tend to be regional rather than nationwide." *Id.* at 7. The Antitrust Division's Complaint charges that the "development, production, and sale of GCC for paper coating applications is a line of commerce and a relevant product market" and the thirteen Southeastern states comprise "a relevant geographic market" within the meaning of Section 7 of the Clayton Act. Complaint, paras. 22, 28–30.

If the merger were left unchallenged, it would reduce a duopoly to a significantly enhanced competitor and a joint venture—Alabama Carbonates—at the mercy of the significantly enhanced competitor. Reserves of sufficient quality are "scarce" and "may be unavailable in the Southeast." For this and other reasons, "new entry is unlikely to occur." Complaint para. 42.

It is axiomatic that reduction from two viable, active competitors to a monopoly in a particular geographic and regional market clearly violates Section 7 of the Clayton Act, 15 U.S.C. § 18, because the merger's impact "may be substantially to lessen competition or to create a monopoly." Under the Herfindahl-Hirschmann Index ("HHI"), the minimum pre-merger HHI of a two-firm market is 5,000, over two and a half times 1800, the HHI index the Merger Guidelines call "highly concentrated." After any merger, the HHI could be as high as 10,000, the maximum HHI possible. U.S. Department of Justice and Federal Trade Commission. *Horizontal Merger Guidelines* § 1.51 (1997).

How does the Antitrust Division propose to remedy this clear competitive problem? By replacing a duopoly with a monopoly and a potential competitor that the Antitrust Division apparently hopes will enter. The proposed Final Judgment requires a number of steps that the Antitrust Division apparently hopes will become the predicate for further entry by another competitor.

The proposed Final Judgment requires: (1) that Georgia Marble dives its interest in the Alabama Carbonates wet-processing facility; and (2) that Imetal/Georgia Marble and/or ECC divest sufficient GCC reserves for Alabama Carbonates to operate at its maximum stated contractual capacity for 30 years. The divestiture of reserves is designed to reduce Alabama Carbonates' dependence on Georgia Marble's reserves and dry processing facilities.

The theory of the proposed Final Judgment is, apparently, that access to these divested reserves is the *"minimum"* that will be sufficient for Alabama Carbonates "*to consider* making the required investments in processing facilities." CICS at 15 (emphasis supplied). In order to effectuate the hoped-for transition, the proposed Final Judgment requires defendants to provide Alabama Carbonates with feedstock for a period of up to three years.

The proposed relief is plainly insufficient under the Clayton Act, the merger Guidelines, and the rule of common sense. Competition in this market is already fragile. There are two competitors only. Under the proposed decree, there is no guarantee that there will even be two competitors in the future, much less two effective competitors. The CIS has no finding, much less a requirement, that Alabama Carbonates will actually enter the market. There is only a hope that if it can gain access to a "minimum" of reserves, Alabama Carbonates will "consider" making the necessary investment to enter the market.

In contrast to the approach in this case, the Horizontal Merger Guidelines require that entry be "timely, likely, and sufficient in its magnitude, character and scope to deter or counteract the competitive effects of concern." *Horizontal Merger Guidelines*, § 3.0. In this instance, there is no finding of timeliness, likelihood or sufficiency in the CIS. We should not give up current competition in a highly concentrated market in exchange for a hope of future competition.

Likelihood of competition is clearly an issue. So is sufficiency. The CIS makes clear that access to high quality reserves is what drives the ability to compete. Yet, under the best circumstances, Alabama Carbonates is limited to 30 years' worth of supply at its *current* contractual capacity. This artificial limitation, to be sure, raises the question even if Alabama Carbonates enters the market, whether it will have enough reserves to sufficiently compete in the future if demand increases. Access to reserves should be keyed to marketplace demand, not current production capacity.

The Final Judgment should not permit *any* possibility of a decrease in competition in such a highly concentrated market. There can be no question that the proposed merger "may lessen competition" and/or "create a monopoly" in violation of Section 7 of the Clayton Act. According to the CIS, "[t]he proposed transaction would likely result in unilateral price increases to customers in the Southeastern United States. Entry is unlikely to occur, and would *not* be *timely* or *sufficient* to defeat a post-acquisition increase in the price of paper grade GCC." CIS at 10 (emphasis supplied); *see* Horizontal Merger Guidelines § 3.0. The CIS goes on to say: "A *de novo*" entrant would have to acquire substantial high bright reserves in the Southeast, establish a quarry and build a processing plant. While the quarry and plant would require considerable expenditures of money and take substantial time, the most significant barrier is obtaining appropriate reserves. Paper-grade GCC requires high bright reserves, which are scarce resources and are generally believed to be largely unavailable in the Southeast because they were owned primarily by Georgia Marble and ECC. CIS at 10."

There is no promise—much less a guarantee—that the decree will preserve any competition, much less effective competition. The Antitrust Division should require that the Imetal/ECC combination leave existing competition intact and that there be market conditions that maximize future competition. Access to reserves in the future should be pegged to future market demands, not current plant capacity. Nothing less will protect consumers.

PACE is also concerned that the transition provisions of the proposed Final Judgment do not fully protect any fledgling competition. Obviously, a situation in which a firm must rely upon its competitor for supply is inherently subject to competitive abuse. Under the transition provisions of the proposed decree, Imetal/ECC must supply Alabama Carbonates with feedstock for a period of up to three years.

According to the CIS: "This provision is designed to provide Alabama Carbonates with a reasonable transition period to make the investment required for it to be self-sufficient in the long term." *Id.* at 16. This bald statement does not answer any of the questions that naturally arise in a transition. Just a few of the questions might be:

- What proof exists that three years is enough time for a potential competitor to secure financing, gain any necessary permits (*e.g.*, zoning or environmental permits), and actually construct a facility?
- What protections exist against the Imetal/ECC combination's adulterating the product that it furnishes Alabama Carbonates? How will quality of the Imetal/ECC input be monitored and maintained? What protections exist against furnishing the product at grossly excessive prices?
- What protections exist against Imetal/ECC delaying delivery of the necessary inputs?
- What protections exist against the Imetal/ECC combination's low-balling the price of GCC slurry so that it becomes infeasible for Alabama Carbonates to enter?
- What protections exist against the Imetal/ECC combination's engaging in so-called "limit pricing"—pricing above the competitive level but not so high as to induce entry?
- In the event of a recession and a slackening of demand, will there be sufficient incentive for Alabama Carbonates to enter?

In sum, the proposed remedy and explanation are completely insufficient to provide any reassurance that any competition—much less effective competition—will continue to exist. In essence, the Antitrust Division proposes, as a result of this merger, to replace two existing competitors with one competitor and a potential competitor. And there is no reason

to believe that the transition provisions will be sufficient to protect any new competitor that does emerge.

Far from being a reassurance, the CIS is a warning. The Antitrust Division should oppose the merger or force a broader divestiture, and preserve competition.

Thank you very much for your consideration of our views.

Sincerely,

Jonathan W. Cuneo, The Cuneo Law Group, P.C., 317 Massachusetts Avenue, N.E., Suite 300, Washington, DC 20002
Attorneys for The Paper, Allied-Industrial Chemical and Energy Workers International Union

cc: George M. Chester, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, Washington, DC 20004

William R. Norfolk, Esquire, Sullivan & Cromwell, 125 Broad Street, New York, NY 10004.

U.S. Department of Justice, Antitrust Division

January 14, 2000.

Jonathan W. Cuneo, Esquire
The Cuneo Law Group, P.C.

Re: Comment on proposed Final Judgment in *United States* v. *Imetal, et al., Civil No. 99 1018 (D.D.C., filed April 26, 1999)*

Dear Mr. Cuneo:

This letter responds to your August 10, 1999 letter commenting on the proposed Final Judgment in *U.S.* v. *Imetal, et al.,* Civil No. 99–1018 (D.D.C., filed April 26, 1999), which is currently pending in federal district court in the District of Columbia. The Complaint in the case charged that Imetal's acquisition of English China Clays ("ECC") would substantially lessen competition in a number of relevant markets, including in the manufacture and sale of paper-grade ground calcium carbonate ("GCC") in the southeastern United States. The proposed Final Judgment would settle the case by requiring divestitures in all the relevant markets alleged. With respect to paper-grade GCC, the proposed Final Judgment requires that Imetal divest its interest in the limited partnership through which it participates in that market, and also divest substantial reserves for the use of that entity.

In your letter, you expressed concern that the proposed Final Judgment did not go far enough to eliminate the effects of Imetal's acquisition of ECC in the market for paper-grade GCC in the southeastern United States. Specifically, you characterize the mandated divestiture as requiring Imetal to "spin off certain assets in the hope that another firm will have sufficient economic incentives to enter the market," and resulting in "the replacement of two existing competitors with a single more powerful competitor—and a competitor to be created."

I disagree with your characterization of the market structure that would result from the proposed Final Judgment, and thus with the fundamental premise of your comments. Before Imetal announced its plans to acquire ECC, there were two competitors in the manufacture and sale of paper-grade GCC in the southeastern United States: ECC and Alabama Carbonates. After Imetal's acquisition of ECC, there are still the same two viable competitors in this market. The competitive issue arose because Imetal had a 50% interest in ECC's only competitor, Alabama Carbonates. The proposed Final Judgment, by requiring Imetal to divest its interest in Alabama Carbonates, ensure that the two competitors that existed before the acquisition will continue to exist as competitors after the acquisition. Alabama Carbonates does not need to "enter the market", it is already in the market. The remedy provided for in the proposed Final Judgment means that Imetal's acquisition of ECC results in no change in the number of firms selling paper-grade GCC in the southeastern United States, no change in concentration, and no change in the HHI for that market.

As you are aware, Alabama Carbonates has historically competed in this market by contracting for its raw materials. Since its inception, it has purchased the feedstock for its wet-processing operations from its joint venturer, Georgia Marble (Imetal). With Imetal's acquisition of ECC, however, if Alabama Carbonates were to continue this arrangement, it would be dependent on its only competitor for its source of supply. The proposed Final Judgment requires Imetal to continue to provide feedstock for the Alabama Carbonates operation, if requested, for up to three years, to permit Alabama Carbonates a reasonable amount of time in which to become independent of Imetal. In addition, recognizing that the company might well decide that the optimum way to achieve that independence is through vertical integration, and that a lack of adequate reserves would be a substantial barrier to such integration, the proposed Final Judgment also requires that Imetal divest substantial reserves of GCC for use by Alabama Carbonates.

Specifically, the proposed Final Judgment requires that Imetal divest sufficient reserves so that Alabama Carbonates will have enough feedstock to make 500,000 tons a year of GCC for thirty years. The United States specified this quantity of reserves in the proposed Final Judgment because we concluded, based on our investigation, that 500,000 tons was an efficient scale for a dry processing plant, and that a business would need to be assured a 30-year supply of reserves in order to justify the investment required to build a dry processing plant. This provision is not intended to limit Alabama Carbonates to competing at its current capacity—rather, it provides the reserves for the company to operate efficiently far into the future. Moreover, there is nothing in the decree that limits in any way the company's ability to expand its operations, including seeking additional reserves.

The United States strongly believes that the divestitures in the proposed Final Judgment relating to paper-grade GCC and other injunctive relief will alleviate the competitive concerns alleged in the Complaint. The divestiture of Imetal's interest in the Alabama Carbonates joint venture and the reserves needed to build a viable dry processing plant ensures that there will be no reduction in the pre-acquisition competition. The two competitors that existed before the acquisition will continue to exist. The requirement that Imetal divest reserves eliminates what could have been a substantial barrier to Alabama Carbonates' continuing to compete without being dependent on Imetal for feedstock for its operations. And finally, the transition agreement assures that Alabama Carbonates will be able to continue as a competitor in the short term while it takes the steps necessary to eliminate its historical dependence on Imetal. The term of that transition agreement was set based on the United States' conclusion, from its investigation, that three years would be sufficient for the joint venture to make the transition to independence. The proposed Final Judgment does provide a mechanism for extending that term, however, if this assumption proves incorrect. In addition, the requirement that the terms of the transition agreement be substantially similar to the supply agreement that existed before the acquisition, and subject to approval by the United States, should provide sufficient protection against the kinds of conduct that you have expressed concern about.

Thank you for bringing your concerns to our attention. I trust you appreciate that we have given them due consideration, and hope this response will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II, Chief, Litigation II Section

Certificate of Service

I hereby certify that I caused a copy of the foregoing United States' Response to Comment Filed by the Paper, Allied-Industrial, Chemical and Energy Workers International Union ("PACE") to be served by first class mail, postage prepaid, this 14th day of January, 2000, on:

George M. Chester, Jr., Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004–7566, Counsel for All Defendants

Jonathan W. Cuneo, Esquire, The Cuneo Law Group, P.C., 317 Massachusetts Avenue, N.E., Suite 300, Washington, D.C. 20002, Counsel for PACE

Patricia G. Chick, D.C. Bar #266403, Trial Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530, (202) 307–0946.

[FR Doc. 00–2703 Filed 2–4–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 28, 2000.

The Department of Labor (DOL) has submitted the following public

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), 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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: The 13 Carcinogens Standard.

OMB Number: 1218–0085.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents. 97.

Estimated Time Per respondent: Time per response ranges from approximately 5 minutes (for employers to maintain records) to 5 hours (for employers to develop emergency/incident reports).

Total Burden Hours: 2,798.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $86,226.

Description: The 13 Carcinogens Standard requires employers to develop signs and labels to warn employees about the hazards associated with the 13 carcinogens. Also, employers must notify OSHA Area Directors of new regulated areas, changes to regulated areas, and incidents that occur in regulated areas. Employers must establish and implement a medical surveillance program for employees assigned to enter regulated areas. This program must inform employees of their medical examination results and provide them with access to their medical records. In addition, employers must retain employee medical records for specified time periods and provide these records to the National Institute for Occupational Safety and Health under certain circumstances.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–2644 Filed 2–4–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

January 28, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), 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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Revising Quarterly Contribution and Wage Reports to Accommodate Expanded Name Fields and Additional Labor Market Information.

OMB Number: 1205–0New.

Affected Public: State, Local, or Tribal Government.

Frequency: One-time.

Number of Respondents: 53.

Estimated Time Per Respondent: 100 Hours.

Total Burden Hours: 5,300.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The information collected with this survey is necessary to assess the burden employers and SESAs would experience if the quarterly contribution and wage reports filed by employers and processed by SESAs were revised to accommodate full names and additional labor market information (LMI). The full name fields are necessary to enhance the efficiency of the National Directory of New Hires database in locating the employment of individuals who are not meeting their parental responsibilities. The additional LMI data are needed to improve the ability to accurately assess the value of various Workforce Investment Act vocational training programs and to enrich the pool of LMI data available.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Employment and Training Administration.

Title: Standard Job Corps Request for Proposal and Related Contractor Information Gathering.

OMB Number: 1205–0219.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

RECURRING PERIODIC JOB CORPS REPORTS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Inspection Residential & Educational Facilities	6–37	114	4	456	1	456
Inspection Water Supply Facilities	6–38	114	4	456	1.25	570
Inspection of Waste Treatment Facilities	6–39	114	4	456	1.25	570
Program Description—Narrative Section	6–124	114	1	114	1	114
Job Corps Health Staff Activity	6–125	114	1	114	.25	29
Job Corps Health Annual Service Costs	6–128	114	1	114	.25	29
Job Corps Utilization Summary	6–127	114	12	1368	2	2,736
Center Financial Report	2110	114	12	1368	3.25	4,446
Center Operations Budget	2181/2181A	250	2	500	2.00	1,000
WSSR Log	6–142B					900
Total Burden						10,850

JOB CORPS NON-PERIODIC REPORTS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Property inventory transcript	3–28	175	12	2100	.75	1,575
Disciplinary discharge	6–131A	1500	1	1500	.5	750
Review board hearings	6–131B	1500	1	1500	.10	150
Rights to appeal	6–131C	1500	1	1500	.10	150
Total Burden						2,625

JOB CORPS CENTER PLANS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Center operation plan		86	1	86	30	2,580
Maintenance		114	1	114	5	570
C/M Welfare		114	1	114	2	228
Annual VST (if applicable)		114	1	114	4	456
Annual staff training		114	1	114	1	114
Energy Conservation		114	1	114	5	570
Outreach (if applicable)		114	1	114	2	228
Total Burden						4,746

STUDENT RECORDS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Allowance & allotment change	6–101					
Forms transmittal letter	6–102					
Signature card	6–103					
Voucher for allocation for living expense	6–104					
Initial allowance authorization	6–106					
Receipt for taxable clothing and transportation	6–105					
Receipt for cash payment	6–107					
Receipt for miscellaneous cash collections	6–108					
Total burden						7,800

Data from the automated forms listed above are being collected from data input screens which are transmitted electronically to a centralized database. This data are then processed for management and performance reports and ad hoc queries at a Center, contractor, regional and national level. The deletion of these forms significantly reduced paper and mailing of hard copy documents.

PERSONNEL REQUIREMENTS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Notice of termination	6–61	60000	1	60000	.03 (2 min.)	1,800
Student profile	6–640	60000	1	60000	.017 (1 min.)	1,020
Academic achievement cert.	6–99	50	20	1000	.10 (6 min.)	100
Total Burden						2,900

NON-STANDARD MEDICAL RECORDS

Required activity	ETA form No.	Number of respondents	Annual frequency	Total annual responses	Annual burden per respondent	Total burden hours
Immunication record	6–112	60000	1	60000	.10	6,000
CM Health record envelope	6–135	60000	1	60000	.25	15,000
CM Health record folder	6–136	60000	1	60000	.25	15,000
Total Burden						36,000

Standard Job Corps Center Request for proposals (RFPS): 19,800 hours.

Total Burden Hours: 84,741.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Standard Request for Proposal for the operation of a Job Corps Center completed by prospective contractors for competitive procurements and Federal paperwork requirements for contract operators of such centers.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–2645 Filed 2–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

January 27, 2000.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by February 18, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Ira Mills, Departmental Clearance Officer, ((202) 219–5096, x 143). Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget 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 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 response.

Type of Review: Emergency.

Agency: Employment and Training Administration.

Title: Workforce Investment Act Cumulative Quarterly Financial Reporting for Funds Allotted to States for Services to Youth, Services to Adults, Services to Dislocated Workers, Local Area Administration, Statewide Activities (15% of Total Federal Allotment), and Statewide Rapid Response.

OMB Number: 1205–0New.

Frequency: Quarterly.

Affected Public: States, Local, or Tribal governments; Not-for-profit institutions.

Number of Respondents: 56.

DOL-ETA REPORTING BURDEN FOR WIA TITLE I–B STATES

Requirements	PY 1999	PY 2000	PY 2001	PY 2002
Number of Reports Per Entity Per Quarter	3	3	3	3
Total Number of Reports Per Entity Per Year	12	12	12	12
Number of Hours Required Per Report	1	1	1	1
Total Number of Hours Required for Reporting Per Entity Per Year	12	12	12	12

DOL-ETA REPORTING BURDEN FOR WIA TITLE I–B STATES—Continued

Requirements	PY 1999	PY 2000	PY 2001	PY 2002
Number of Entities Reporting	16	56	56	56
Total Number of Hours Required for Reporting Burden Per Year	192	672	672	672

Note: Number of reports required per entity per quarter/per year is impacted by the 3 year life of each year of appropriated funds, *i.e.*, PY 1997 and 1998 funds are available for expenditure in PY 1999, thus 3 reports reflect 3 available funding years. DOL estimates 16 entities reporting for PY 1999. Beginning in PY 2000, all entities (56) are required to report under WIA.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Description: The proposed Information Collection Request (ICR) incorporates the necessary reporting instructions for States to report financial data related to Workforce Investment Act programs to DOL. These instructions have been prepared in response to the requirement set forth at 20 CFR 667.300, for DOL to issue financial reporting instructions to States; and to ensure State compliance with the reporting elements contained in the Workforce Investment Act (WIA) of 1998, Subtitle E. Sec. 185.

The WIA requires quarterly financial reports which shall include information identifying all program and activity costs by cost category in accordance with generally accepted accounting principles and by year of appropriation. The WIA also requires reporting any income or profits earned, such including such income or profits earned by subrecipients and any costs incurred (such as stand-in costs) that are otherwise allowable except for funding limitations. In addition, WIA requires the reporting of costs only as administrative or programmatic, with computerization/technology costs not included in the administrative cost limit calculation.

The Standard Form 269 has been modified to provide the six reporting formats which will be used for WIA reporting. Separate reporting formats will be needed for: (1) Local area youth, (2) local area adults, (3) local area dislocated workers, (4) local administration, (5) Statewide activities (15% total Federal allotment), and (6) Statewide rapid response.

ETA is designing software that will contain the data elements required for each of the reporting formats. Instructions corresponding to the required data elements also will be provided to the States in the software package. Transmittal of this data will occur on a quarterly basis via the Internet.

The data collection and reporting requirements requested by the Employment and Training Administration are necessary to effectively manage and evaluate the financial status of the WIA program, to measure regulatory compliance, to prepare required reports to Congress, and for audit purposes.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–2646 Filed 2–4–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Homeless Veterans' Reintegration Project Competitive Grants

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training.

ACTION: Notice of availability of funds and solicitation for grant applications for Homeless Veterans Reintegration Projects (SGA 00–01).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. All applicants for grant funds should read this notice in its entirety. The U.S. Department of Labor, Veterans' Employment and Training Service (VETS) announces a grant competition for Homeless Veterans Reintegration Projects (HVRP) authorized under the Stewart B. McKinney Homeless Assistance Act. Such projects will assist eligible veterans who are homeless by providing employment, training, supportive and transitional housing assistance. Under this solicitation, VETS may award up to thirty-three grants in FY 2000.

This notice describes the background, the application process, description of program activities, evaluation criteria, and reporting requirements for Solicitation of Grant Applications (SGA) 00–01. VETS anticipates that up to $8.25 million will be available for grant awards under this SGA.

The information and forms contained in the Supplementary Information Section of this announcement constitute the official application package for this Solicitation. In order to receive any amendments to this Solicitation which may be subsequently issued, *all applicants must register their name and address with the Procurement Services Center.* Please send this information as soon as possible, Attention: Grant Officer, to the following address: U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210. Please reference SGA 00–01.

DATES: One (1) blue ink-signed original, complete grant application plus three (3) copies of the Technical Proposal and three (3) copies of the Cost Proposal shall be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210, not later than 4:45 p.m., Eastern Standard Time, March 8, 2000, or be postmarked by the U.S. Postal Service on or before that date. Hand delivered applications must be received by the Procurement Services Center by that time.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Procurement Services Center, Attention: Lisa Harvey, Reference SGA 00–01, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 219–6445 [not a toll free number].

SUPPLEMENTARY INFORMATION:

Homeless Veterans Reintegration Project Solicitation

I. Purpose

The U.S. Department of Labor (DOL), Veterans' Employment and Training Service (VETS) is requesting grant applications for the provision of employment and training services in accordance with the Stewart B. McKinney Homeless Assistance Act (MHAA), as reauthorized and codified at Title 38, Chapter 41, Section 4111. These instructions contain general program information, requirements and forms for application for funds to operate a Homeless Veterans Reintegration Project (HVRP).

II. Background

The Stewart B. McKinney Homeless Assistance Act of 1987, enacted on July 22, 1987, under Title VII, Subtitle C, Section 738 provides that "The Secretary shall conduct, directly or through grant or contract, such programs as the Secretary determines appropriate to *expedite the reintegration of homeless veterans into the labor force.*" This program was reauthorized under Section 621 of the McKinney Homeless Assistance Amendments Act of 1990 (Public Law 101–645) for an additional three years, *i.e.,* through FY 1993. Under the Homeless Veterans Comprehensive Service Programs Act of 1992 (Public Law 102–590—enacted on November 10, 1992) the Homeless Veterans Reintegration Project was reauthorized through Fiscal Year 1995. However, the program was rescinded in FY 1995. Public Law 104–275, dated October 9, 1996, was amended to reauthorize the program through FY 1998. Public Laws 105–41 and 105–114, enacted in 1997, extend the program through FY 1999. Public Law 106–73 dated October 19, 1999, reauthorized and codified at Title 38, Chapter 41, Section 4111 extends the program through FY 2003.

The Homeless Veterans Reintegration Project was the first nationwide Federal program that focused on placing homeless veterans into jobs. In accordance with the MHAA, the Assistant Secretary for Veterans' Employment and Training (ASVET) is making approximately $8.25 million of the funds available to award grants for HVRPs in selected cities in FY 2000 under this competition. A separate competition for a small number of demonstration grants to operate in rural areas will be announced separately within a short time. Both types of projects, urban and rural, in the past have provided valuable information on approaches that work in the different environments.

III. Application Process

A. Potential Jurisdictions to be Served

Due to the demonstration nature of the Act, the amount of funds available, and the emphasis on establishing or strengthening existing linkages with other recipients of funds under the MHAA, the only potential jurisdictions which will be served through this urban competition for HVRPs in FY 2000 are the metropolitan areas of the 75 U.S. cities largest in population and the city of San Juan, Puerto Rico. All potential HVRP jurisdictions are listed in Appendix E.

B. Eligible Applicants

Applications for funds will be accepted from State and local public agencies, Private Industry Councils, and nonprofit organizations as follows:

1. Private Industry Councils (PICS) and/or Workforce Investment Boards (WIBS) as defined in Title I, Section 102 of the Job Training Partnership Act (JTPA), Public Law 97–300, are eligible applicants, as well as State and local public agencies. "Local public agency" refers to any public agency of a general purpose political subdivision of a State which has the power to levy taxes and spend funds, as well as general corporate and police powers. (This typically refers to cities and counties). A State agency may propose in its application to serve one or more of the potential jurisdictions located in its State. This does not preclude a city or county agency from submitting an application to serve its own jurisdiction.

Applicants are encouraged to utilize, through subgrants, experienced public agencies, private nonprofit organizations, and private businesses which have an understanding of the unemployment and homeless problems of veterans, a familiarity with the area to be served, and the capability to effectively provide the necessary services.

2. Also eligible to apply are nonprofit organizations which have operated an HVRP or similar employment and training program for the homeless or veterans; have proven capacity to manage Federal grants; and have or will provide the necessary linkages with other service providers. Nonprofit organizations will be required to submit with their application recent (within one year) financial audit statements that attest to the financial responsibility of the organization.

Entities described in Section 501(c)4 of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, Public Law No. 104–65, 109 Stat. 691, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

C. Funding Levels

The total amount of funds available for this solicitation is $8.25 million. It is anticipated that up to 33 awards may be made under this solicitation. Awards are expected to range from $100,000 to $250,000. The Federal government reserves the right to negotiate the amounts to be awarded under this competition. Please be advised that requests exceeding this range by 15% or more may be considered non-responsive.

D. Period of Performance

The period of performance will be for nine months from date of award. It is expected that successful applicants will commence program operations under this solicitation on or before April 1, 2000. Actual start dates will be negotiated with each successful applicant.

E. Second Year Option

As stated in Section II of this Part, the Homeless Veterans Reintegration Project was reauthorized and codified by statute at Title 38, Chapter 41, Section 4111. Should there be action by Congress to appropriate funds for this purpose, a second year option may be considered. The Government does not, however, guarantee an option year for any awardee.

The grantees' performance during the first period of operations will be taken into consideration as follows:

1. By the end of the second quarter, has the grantee achieved at least 60% of the nine month total goals for Federal expenditures, enrollments, and placements? or

2. Has the grantee met 85% of goals for Federal expenditures, enrollments and placements for the nine month period if planned activity is NOT evenly distributed in each quarter? and

3. The Grantee is in compliance with all terms identified in the solicitation for grant applications.

All instructions for modifications and announcement of fund availability will be issued at a later date. Please note that the Government does reserve its right to compete any subsequent funds appropriated for this purpose in lieu of an option year.

F. Late Proposals

The grant application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Office of Procurement Services after 4:45 pm EST, March 8, 2000, will not be considered unless it is received before the award is made and:

1. It was sent by registered or certified mail not later than the fifth calendar day before March 8, 2000;

2. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated; or

3. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 pm at the place of mailing two (2)

working days, excluding weekends and Federal holidays, prior to March 8, 2000.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped or otherwise placed impression (*not* a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Services Center on the application wrapper or other documentary evidence or receipt maintained by that office. Applications sent by telegram or facsimile (FAX) will *not* be accepted.

G. Submission of Proposal

A cover letter, and an original and three (3) copies of the proposal shall be submitted. The proposal shall consist of two (2) separate and distinct parts:

Part I—Technical Proposal shall consist of a narrative proposal that demonstrates the applicant's knowledge of the need for this particular grant program, its understanding of the services and activities proposed to alleviate the need and its capabilities to accomplish the expected outcomes of the proposed project design. The technical proposal shall consist of a narrative not to exceed fifteen (15) pages double-spaced, typewritten on one side of the paper only. Resumes, charts, standard forms, exhibits, letters of support and letters of reference are not counted against the page limit. Applicants should be responsive to the Rating Criteria contained in Section VI and address all of the rating factors noted as thoroughly as possible in the narrative. The following format is strongly recommended:

1. Need for the project: the applicant should identify the geographical area to be served and provide an estimate of the number of homeless veterans and their needs, poverty and unemployment rates in the area, and gaps in the local community infrastructure the project would fill in addressing the employment and other barriers of the targeted veterans. Include the outlook for job opportunities in the service area.

2. Approach or strategy to increase employment and job retention: The applicant should describe the specific supportive services and employment and training services to be provided under this grant and the sequence or flow of such services. Participant flow charts may be provided. Include a description of the relationship with other employment and training programs such as Disabled Veterans' Outreach Program (DVOP) and the Local Veterans' Employment Representative (LVER) program, and programs under the Job Training Partnership Act. Please include a plan for follow up of participants who entered employment at 30 and 90 days and also a plan for follow up six months after the end of the ninety day period. (See discussion on results in Section V. D.) Include the chart of proposed performance goals and planned expenditures listed in Appendix D. Although the form itself is not mandatory, the information called for in Appendix D must be provided by the applicant.

3. Linkages with other providers of employment and training services to the homeless and to veterans: Describe the linkages this programs will have with other providers of services to veterans and to the homeless outside of the HVRP grant. List the types of services provided by each. Note the type of agreement in place if applicable. Linkages with the workforce development system [inclusive of JTPA and State Employment Security Agencies (SESAs)] should be delineated. Describe any linkages with Department of Housing and Urban Development (HUD) and Department of Veterans Affairs resources and programs for the homeless. Indicate how the applicant will coordinate with any "continuum of care" efforts for the homeless among agencies in the community.

4. Organizational capability in providing required program activities: The applicant's relevant current or prior experience in operating employment and training programs should be delineated. (For consideration by panel members, the government reserves the right to have a representative of the Veterans' Employment and Training Service within your state provide programmatic and fiscal information about applicants and forward those findings to the National Office during the review of applications) Provide information denoting outcomes of past programs in terms of enrollments and placements. Applicants who have operated an HVRP program, or Homeless Veterans Employment and Training (HVET) program should include final or most recent technical performance reports. (This information is also subject to verification by the Veterans' Employment and Training Service.) Provide evidence of key staff capability. Non-profit organizations should submit evidence of satisfactory financial management capability including recent financial and/or audit statements.

5. Proposed housing strategy for homeless veterans: Describe how housing resources for homeless veterans will be obtained or accessed. These resources may be from linkages or sources other than the HVRP grant such as HUD, community housing resources, DVA leasing or other programs. The applicant should explain whether HVRP resources will be used and why this is necessary.

Part II—Cost Proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance," and the Budget Information Sheet in Appendix B. In addition the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Please label this page or pages the "Budget Narrative." Also to be included in this Part is the Assurance and Certification Page, Appendix C. Copies of all required forms with instructions for completion are provided as appendices to this solicitation. The Catalog of Federal Domestic Assistance number for this program is 17.805, which should be entered on the SF 424, Block 10. Please show leveraged resources/matching funds and/or the value of in-kind contributions in Section B of the Budget Information Sheet.

Budget Narrative Information

As an attachment to the Budget Information Sheet, the applicant must provide at a minimum, and on separate sheet(s), the following information:

(a) A breakout of all personnel costs by position, title, salary rates and

percent of time of each position to be devoted to the proposed project (including subgrantees);

(b) An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);

(c) An explanation of the purpose and composition of, and method used to derive the costs of each of the following: travel, equipment, supplies, subgrants/contracts and any other costs. The applicant should include costs of any required travel described in this Solicitation. Mileage charges shall not exceed 32.5 cents per mile;

(d) In order that the Department of Labor meet legislative requirements, submit a plan along with all costs associated with retaining participant information pertinent to a longitudinal follow up survey for at least six months after the ninety day closeout period.

(e) Description/specification of and justification for equipment purchases, if any. Tangible, non-expendable, personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified; and

(f) Identification of all sources of leveraged or matching funds and an explanation of the derivation of the value of matching/in-kind Services.

IV. Participant Eligibility

To be eligible for participation under HVRP, an individual must be homeless and a veteran defined as follows:

A. The term "homeless or homeless individual" includes persons who lack a fixed, regular, and adequate nighttime residence. It also includes persons whose primary nighttime residence is either a supervised public or private shelter designed to provide temporary living accommodations; an institution that provides a temporary residence for individuals intended to be institutionalized; or a private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. (Reference 42 USC 11302).

B. The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable. [Reference 38 USC 101(2)]

V. Project Summary

A. Program Concept and Emphasis

The HVRP grants under Section 738 of the Stewart B. McKinney Homeless Assistance Act are intended to address dual objectives:

Provide services to assist in reintegrating homeless veterans into the labor force; and stimulate the development of effective service delivery systems that will seek to address the complex problems facing homeless veterans. These programs are designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. The program in FY 2000 will continue to strengthen the provision of comprehensive services through a case management approach, the attainment of housing resources for veterans entering the labor force, and strategies for employment and retention.

B. Required Features

1. The HVRP has since its inception featured an outreach component consisting of veterans who have experienced homelessness. In recent years this requirement was modified to allow the projects to utilize formerly homeless veterans in other positions where there is direct client contact if outreach was not needed extensively, such as counseling, peer coaching, intake and follow up. This requirement applies to projects funded under this solicitation.

2. Projects will be required to show linkages with other programs and services which provide support to homeless veterans. Coordination with the Disabled Veterans' Outreach Program (DVOP) Specialists in the jurisdiction is required.

3. Projects will be "employment focused." That is, they will be directed towards (a) increasing the employability of homeless veterans through providing for or arranging for the provision of services which will enable them to work; and (b) matching homeless veterans with potential employers.

C. Scope of Program Design

The HVRP project design should provide or arrange for the following services:

—Outreach, intake, assessment, counseling and employment services. Outreach should, to the degree practical, be provided at shelters, day centers, soup kitchens, VA medical centers and other programs for the homeless. Program staff providing outreach services are to be veterans who have experienced homelessness.

Coordination with veterans' services programs and organizations such as:

—Disabled Veterans' Outreach Program (DVOP) Specialists and Local Veterans' Employment Representatives (LVERs) in the State Employment Security/Job Service Agencies (SESAs) or in the newly instituted workforce development system's One-Stop Centers, JTPA Title IV, Part C (IV–C) Veterans' Employment Program
—Department of Veterans' Affairs (DVA) services, including its Health Care for Homeless Veterans, Domiciliary and other programs, including those offering transitional housing
—Veteran service organizations such as The American Legion, Disabled American Veterans, and the Veterans of Foreign Wars, Vietnam Veterans of America, and the American Veterans (AMVETS)

Referral to necessary treatment services, rehabilitative services, and counseling including, but not limited to:

—Alcohol and drug
—Medical
—Post Traumatic Stress Disorder
—Mental Health
—Coordinating with MHAA Title VI programs for health care for the homeless

Referral to housing assistance provided by:

—Local shelters
—Federal Emergency Management Administration (FEMA) food and shelter programs
—Transitional housing programs and single room occupancy housing programs funded under MHAA Title IV
—Permanent housing programs for the handicapped homeless funded under MHAA Title IV
—Department of Veterans' Affairs programs that provide for leasing or sale of acquired homes to homeless providers
—Transitional housing leased by HVRP funds (HVRP funds cannot be used to purchase housing)

Employment and training services such as:

—Basic skills instruction
—Basic literacy instruction
—Remedial education activities
—Job search activities
—Job counseling
—Job preparatory training, including resume writing and interviewing skills
—Subsidized trial employment (Work Experience)
—On-the-Job Training
—Classroom Training
—Job placement in unsubsidized employment
—Placement follow up services
—Services provided under JTPA Program Titles

D. Results-Oriented Model

Based on past experience of grantees working with this target group, a workable program model evolved which

is presented for consideration by prospective applicants. No model is mandatory, and the applicant should design a program that is responsive to local needs, but will carry out the objectives of the HVRP to successfully reintegrate homeless veterans into the workforce.

With the advent of implementing the Government Performance and Results Act (GPRA), Congress and the public are looking for results rather than process. While entering employment is a viable outcome, it will be necessary to measure results over a longer term to determine the success of programs. The following program discussion emphasizes that followup is an integral program component.

The first phase of activity consists of the level of outreach that is necessary in the community to reach veterans who are homeless. This may also include establishing contact with other agencies that encounter homeless veterans such as shelters, soup kitchens and other facilities. An assessment should be made of the supportive and social rehabilitation needs of the client and referral may take place to services such as drug or alcohol treatment or temporary shelter. When the individual is stabilized, the assessment should focus on the employability of the individual and they are enrolled into the program if they would benefit from pre-employment preparation such as resume writing, job search workshops, related counseling and case management, and initial entry into the job market through temporary jobs, sheltered work environments, or entry into classroom or on-the-job training. Such services should also be noted in an Employability Development Plan so that successful completion of the plan may be monitored by the staff.

Entry into full-time employment or a specific job training program should follow in keeping with the objective of HVRP to bring the participant closer to self-sufficiency. Transitional housing may assist the participant at this stage or even earlier. Job development is a crucial part of the employability process. The DVOP and LVER staff must be utilized for job development and placement activities for veterans who are ready to enter employment *or* who are in need of intensive case management services. Many of these staff have received training in case management at the National Veterans' Training Institution and have as a priority of focus, assisting those most at a disadvantage in the labor market. VETS urges working hand-in-hand with DVOP/LVER staff to achieve economies of resources. If the DVOP and LVER staff are not being utilized, the applicant must submit a written explanation explaining the reasons why they are not.

Follow up to determine if the veteran is in the same or similar job at the 30 day period after entering employment is required and important in keeping contact with the veterans and so that assistance in keeping the job may be provided. The 90 day followup is fundamental to assessing the results of the program interventions. Grantees should be careful to budget for this activity so that followup can and will occur for those placed at or near the end of the grant period. Such results will be reported in the final technical performance report.

VETS emphasizes in its Strategic Plan to implement GPRA that suitable outcomes involve careers, not just jobs. Successful results are achieved when the veteran is in the same or similar job after one or more years. Towards that end, VETS solicits the cooperation of successful applicants to budget for the activity of retaining participant information pertinent to a longitudinal follow up survey, *i.e.*, at least for six months after the ninety day closeout period. Retention of records will be reflected in the Special Provisions at time of award.

E. Related HVRP Program Development Activities

1. Community Awareness Activities

In order to promote linkages between the HVRP program and local service providers (and thereby eliminate gaps or duplication in services and enhance provision of assistance to participants), the grantee must provide project orientation and/or service awareness activities that it determines are the most feasible for the types of providers listed below. Project orientation workshops conducted by HVRP grantees have been an effective means of sharing information and revealing the availability of other services; they are encouraged but not mandatory. Rather, the grantee will have the flexibility to attend service provider meetings, seminars, conferences, to out station staff, to develop individual service contracts, and to involve other agencies in program planning. This list is not exhaustive. The grantee will be responsible for providing appropriate awareness, information sharing, and orientation activities to the following:

a. *Providers of hands-on services to the homeless*, such as shelter and soup-kitchen operators, to make them fully aware of services available to homeless veterans to make them job-ready and place them in jobs.

b. *Federal, State and local entitlement services* such as the Social Security Administration, Department of Veterans' Affairs (DVA), State Employment Security Agencies (SESAs) and their local Job Service offices, One-Stop Centers (which integrate JTPA, labor exchange and other employment and social services), detoxification facilities, etc., to familiarize them with the nature and needs of homeless veterans.

c. *Civic and private sector groups*, and especially veterans' service organizations, to describe homeless veterans and their needs.

2. Stand Down Support

A "Stand Down" as it relates to homeless veterans is an event held in a locality usually for three days where services are provided to homeless veterans along with shelter, meals, clothing and medical attention. For the most part this type of event is a volunteer effort which is organized within a community and brings service providers such as the DVA, Disabled Veterans Outreach Program Specialists, Local Veterans' Employment Representatives from the State Employment Service Agencies, veteran service organization, military personnel, civic leaders, and a variety of other interested persons and organizations. Many services are provided on site with referrals also made for continued assistance after the event. This can often be the catalyst that enables the homeless veterans to get back into mainstream society. The Department of Labor has supported replication of this event. Many such exercises have been held throughout the nation. In areas where an HVRP is operating, the grantees are encouraged to participate fully and offer their services for any planned Stand Down event. Towards this end, up to $5,000 of the currently requested HVRP MHAA grant funds may be used to supplement the Stand Down effort where funds are not otherwise available and should be reflected in the budget and budget narrative.

VI. Rating Criteria for Award

Applications will be reviewed by a DOL panel using the point scoring system specified below. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. The ranking will be the primary basis to identify approximately 33 applicants as potential grantees. Although the Government reserves the right to award on the basis of the initial proposal submissions, the Government may establish a competitive range, based

upon the proposal evaluation, for the purpose of selecting qualified applicants. The panel's conclusions are advisory in nature and not binding on the Grant Officer. The government reserves the right to ask for clarification or hold discussions, but is not obligated to do so. The Government further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in the most effective and appropriate combination of funding, demonstration models, and geographical service areas. The Grant Officer's determination for award under SGA 00–01 is the final agency action. The submission of the same proposal from any prior year HVRP or HVET competition does not guarantee an award under this Solicitation.

Panel Review Criteria

1. Need for the Project: 15 Points

The applicant shall document the extent of need for this project, as demonstrated by: (1) the potential number or concentration of homeless individuals and homeless veterans in the proposed project area relative to other similar areas of jurisdiction; (2) the high rates of poverty and/or unemployment in the proposed project area as determined by the census or other surveys; and (3) the extent of gaps in the local infrastructure to effectively address the employment barriers which characterize the target population.

2. Overall Strategy To Increase Employment and Retention: 30 Points

The application must include a description of the proposed approach to providing comprehensive employment and training services, including job training, job development, placement and post placement followup services. The supportive services to be provided as part of the strategy of promoting job readiness and job retention should be indicated. The applicant should identify the local human resources and sources of training to be used for participants. A description of the relationship, if any, with other employment and training programs such as SESAs (DVOP and LVER Programs), JTPA IV-C, other JTPA programs, and Workforce Development Boards or entities where in place, should be presented. It should be indicated how the activities will be tailored or responsive to the needs of homeless veterans. A participant flow chart may be used to show the sequence and mix of services. Note: The applicant MUST complete the chart of proposed program outcomes to include participants served, and job retention. (See Appendix D)

3. Quality and Extent of Linkages With Other Providers of Services to the Homeless and to Veterans: 20 Points

The application should provide information on the quality and extent of the linkages this program will have with other providers of services to benefit the homeless or veterans in the local community outside of the HVRP grant. For each service, it should be specified who the provider is, the source of funding (if known), and the type of linkages/referral system established or proposed. Describe to the extent possible, how the project would fit into the community's "continuum of care" approach to respond to homelessness and any linkages to HUD or DVA programs or resources to benefit the proposed program.

4. Demonstrated Capability in Providing Required Program Services: 20 Points

The applicant should describe its relevant prior experience in operating employment and training programs and providing services to participants similar to that which is proposed under this solicitation. Specific outcomes achieved by the applicant should be described in terms of clients placed in jobs, etc. The applicant must also delineate its staff capability and ability to manage the financial aspects of Federal grant programs. Relevant documentation such as financial and/or audit statements should be submitted (required for applicants who are non-profit agencies). Final or most recent technical reports for HVRP, HVET or other relevant programs should be submitted as applicable. The applicant should also address its capacity for timely startup of the program.

5. Quality of Overall Housing Strategy: 15 Points

The application should demonstrate how the applicant proposes to obtain or access housing resources for veterans in the program and entering the labor force. This discussion should specify the provisions made to access temporary, transitional, and permanent housing for participants through community resources. HUD, lease, HVRP or other means. HVRP funds may not be used to purchase housing.

Applicants can expect that the cost proposal will be reviewed for allowability, allocability, and reasonableness of costs, but will not be scored.

VII. Post Award Conference

A post-award conference for those awarded FY 2000 HVRP funds is tentatively planned for April or May, 2000. Costs associated with attending this conference for up to three grantee representatives will be allowed as long as they were incurred in accordance with Federal travel regulations. Such costs shall be charged as administrative costs and reflected in the proposed budget. The site of the conference has not yet been determined but will likely be for three days in Washington, DC. Please use Washington, DC for budget planning purposes. The conference will focus on providing information and assistance on reporting, record keeping, and grant requirements, and will also include best practices from past projects.

VIII. Reporting Requirements

The grantee shall submit the reports and documents listed below:

A. Financial Reports

The grantee shall report outlays, program income, and other financial information on a quarterly basis using SF 269A, *Financial Status Report, Short Form.* These forms shall cite the assigned grant number and be submitted to the appropriate State Director for Veterans' Employment and Training (DVET) no later than 30 days after the ending date of each Federal fiscal quarter during the grant period. In addition, a final SF 269 shall be submitted no later than 90 days after the end of the grant period.

B. Program Reports

Grantees shall submit a Quarterly Technical Performance Report no later than 30 days after the end of each Federal fiscal quarter. Grantee will submit to the DVET a Quarterly Technical Performance Report (QTPR) containing the following:

1. A comparison of actual accomplishments to established goals for the reporting period and any findings related to monitoring efforts;

2. An explanation for variances of plus or minus 15% of planned program and/or expenditure goals, to include: (i) identification of the corrective action which will be taken to meet the planned goals, and (ii) a timetable for accomplishment of the corrective action.

A final Technical Performance Report will also be required as part of the final report package due 90 days after grant expiration.

In addition, the grantees will also be required to submit a closeout Technical Performance Report pertinent to the longitudinal follow up efforts due 6 months after the 90 day closeout period.

C. Summary of Final Report Packages

No later than 90 days after the grant period ends, regardless of approval for second year funding, the grantee will submit a final report containing the following:

1. Final Financial Status Report (SF–269A).

2. Final Technical Performance Report—(Program Goals).

3. Final Narrative Report identifying—(a) major successes of the program; (b) obstacles encountered and actions taken (if any) to overcome such obstacles; (c) the total combined (directed/assisted) number of veterans placed during the entire grant period; (d) the number of veterans still employed at the end of the grant period; (e) an explanation regarding why those veterans placed during the grant period, but not employed at the end of the grant period, are not so employed; and (f) any recommendations to improve the program.

No later than 6 months after the 90 day closeout period, the grantee will submit a followup report containing the following:

1. Closeout Financial Status Report (SF–269A).

2. Closeout Narrative Report identifying—(a) the total combined (directed/assisted) number of veterans placed during the entire grant period; (b) the number of veterans still employed during follow up; (c) are the veterans still employed at the same or similar job, if not what are reasons; (d) was the training received applicable to jobs held; (e) wages at placement and during follow up period; (f) an explanation regarding why those veterans placed during the grant, but not employed at the end of the follow up period, are not so employed; and (g) any recommendations to improve the program.

IX. Administrative Provisions

A. Limitation on Administrative and Indirect Costs

1. Direct Costs for administration, plus any indirect charges claimed, may not exceed 20 percent of the total amount of the grant.

2. Indirect costs claimed by the applicant shall be based on a federally approved rate. A copy of the negotiated, approved, and signed indirect cost negotiation agreement must be submitted with the application. (Do not submit the State cost allocation plan.)

3. Rates traceable and trackable through the SESA Cost Accounting System represent an acceptable means of allocating costs to DOL and, therefore, can be approved for use in MHAA grants to SESAs.

4. If the applicant does not presently have an approved indirect cost rate, a proposed rate with justification may be submitted. Successful applicants will be required to negotiate an acceptable and allowable rate with the appropriate DOL Regional Office of Cost Determination within 90 days of grant award.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable Federal cost principles:

State and local government—OMB Circular A–87

Nonprofit organizations—OMB Circular A–122

C. Administrative Standards and Provisions

All grants shall be subject to the following administrative standards and provisions:

29 CFR Part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

29 CFR Part 95—Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations.

29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

29 CFR Part 30—Equal Employment Opportunity in Apprenticeship and Training.

29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

Signed at Washington, DC this 1st day of February, 2000.

Lawrence J. Kuss,

Grant Officer.

Appendices

Appendix A: Application for Federal Assistance SF Form 424

Appendix B: Budget Information Sheet

Appendix C: Assurances and Certifications Signature Page

Appendix D. Technical Performance Goals Form

Appendix E. List of 75 largest U.S. Cities

Appendix F. HVRP Performance Goals Definitions

Appendix G. Direct Cost Descriptions for Applicants and Sub-Applicants

BILLING CODE 4910–59–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits****: Indicate the rate and amount of fringe benefits.*

3. ***Travel****: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

ASSURANCES AND CERTIFICATIONS - SIGNATURE PAGE

The Department of Labor will not award a grant or agreement where the grantee/recipient has failed to accept the ASSURANCES AND CERTIFICATIONS contained in this section. By signing and returning this signature page, the grantee/recipient is providing the certifications set forth below:

A. Assurances - Non-Construction Programs

B. Certifications Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters and Drug-Free/Tobacco-Free Workplace Requirements.

C. Certification of Release of Information

APPLICANT NAME and LEGAL ADDRESS:

If there is any reason why one of the assurances or certifications listed cannot be signed, please explain. Applicant need only submit and return this signature page with the grant application. All other instructions shall be kept on file by the applicant.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL TITLE

APPLICANT ORGANIZATION DATE SUBMITTED

Please Note: **This signature page and any pertinent attachments which may be required by these assurances and certifications shall be attached to the applicant's Cost Proposal.**

Appendix D

RECOMMENDED FORMAT FOR PLANNED QUARTERLY TECHNICAL PERFORMANCE GOALS

(data entered cumulatively)

Performance Goals

	1ST QTR	2ND QTR	3RD QTR	4TH QTR
Assessments				
Participants Enrolled				
Placed Into Transitional Or Permanent Housing				
Direct Placements Into Unsubsidized Employment				
Assisted Placements Into Unsubsidized Employment				
Combined Placements Into Unsubsidized Employment (Direct & Assisted)				
Cost Per Placement				
Number Retaining Jobs For 30 Days				
Number Retaining Jobs For 90 Days				
Rate of Placement Into Unsubsidized Employment				
Average Hourly Wage At Placement				

Employability Development Services - (As Applicable)

Classroom Training				
On-The-Job Training				
Remedial Education				
Vocational Counseling				
Pre-employment Services				
Occupational Skills Training				
_____				
_____				
_____				
_____				

Planned Expenditures

	1st Qtr	2nd Qtr	3rd Qtr	4th Qtr
Total Expenditures	$	$	$	$
Administrative Costs	$	$	$	$
Participant Services*	$	$	$	$

*Services may include training and/or supportive.

Appendix E

POTENTIAL HVRP JURISDICTIONS - FY 2000

ALABAMA
- Birmingham

ALASKA
- Anchorage

ARIZONA
- Mesa
- Phoenix
- Tucson

CALIFORNIA
- Anaheim
- Fresno
- Long Beach
- Los Angeles
- Oakland
- Riverside
- Sacramento
- San Diego
- San Francisco
- San Jose
- Santa Ana
- Stockton

COLORADO
- Aurora
- Colorado Springs
- Denver

DISTRICT OF COLUMBIA

FLORIDA
- Jacksonville
- Miami
- St. Petersburg
- Tampa

GEORGIA
- Atlanta

HAWAII
- Honolulu

ILLINOIS
- Chicago

INDIANA
- Indianapolis

KANSAS
- Wichita

KENTUCKY
- Lexington-Fayette
- Louisville

LOUISIANA
- Baton Rouge
- New Orleans

MARYLAND
- Baltimore

MASSACHUSETTS
- Boston

MICHIGAN
- Detroit

MINNESOTA
- Minneapolis
- St. Paul

MISSOURI
- Kansas City
- St. Louis

NEBRASKA
- Omaha

NEVADA
- Las Vegas

NEW JERSEY
- Jersey City
- Newark

NEW MEXICO
- Albuquerque

NEW YORK
- Buffalo
- New York
- Rochester

POTENTIAL HVRP JURISDICTIONS - FY 2000

NORTH CAROLINA
- Charlotte
- Raleigh

OHIO
- Akron
- Cincinnati
- Cleveland
- Columbus
- Toledo

OKLAHOMA
- Oklahoma City
- Tulsa

OREGON
- Portland

PENNSYLVANIA
- Philadelphia
- Pittsburgh

TENNESSEE
- Memphis
- Nashville/Davidson

TEXAS
- Arlington
- Austin
- Corpus Christi
- Dallas
- El Paso
- Fort Worth
- Houston
- San Antonio

VIRGINIA
- Norfolk
- Virginia Beach

WASHINGTON
- Seattle

WISCONSIN
- Milwaukee

PUERTO RICO
- San Juan

Appendix F

HVRP PERFORMANCE GOAL DEFINITIONS

1. Assessments. This process includes addressing the supportive services and employability and training needs of individuals before enrolling them in an HVRP program. Generally, this includes an evaluation and/or measurement of vocational interests and aptitudes, present abilities, previous education and work experience, income requirements, addressing supportive service needs, substance abuse treatment needs, counseling needs, temporary or transitional housing needs, personal circumstances and other related services.

2. Participants Enrolled. A client should be recorded as having been enrolled when an intake form has been completed, and services, referral, or employment has been received through the HVRP program. This should be an unduplicated count over the year: i.e., each participant is recorded only once, regardless of the number of times she or he receives assistance.

3. Placed Into Transitional Or Permanent Housing. A placement into transitional or permanent housing should be recorded when a veteran served by the program upgrades his/her housing situation during the reporting period from shelter/streets to transitional housing or permanent housing or from transitional housing to permanent housing. Placements resulting from referrals by HVRP staff shall be counted. This item is however an unduplicated count over the year, except that a participant may be counted once upon entering transitional housing and again upon obtaining permanent housing.

4. Direct Placements Into Unsubsidized Employment. A direct placement into unsubsidized employment must be a placement made directly by HVRP-funded staff with an established employer who covers all employment costs for 20 or more hours per week at or above the minimum wage. Day labor and other very short-term placements should not be recorded as placements into unsubsidized employment.

5. Assisted Placements Into Unsubsidized Employment. Assisted placements into unsubsidized employment should be recorded where the definition for placement with unsubsidized employment above is met, but the placement was arranged by an agency to which the HVRP referred the homeless veteran, such as a Job Training Partnership Act (JTPA) program.

6. Cost Per Placement. The cost per placement into unsubsidized employment is obtained by dividing the total HVRP funds expended by the total of direct placements plus assisted placements.

7. Number Retaining Job For 30 Days. To be counted as retaining a job for 30 days, continuous employment with one or more employers for at least 30 days must be verified and the definition for either direct placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 30 days as long as the client has been steadily employed for that length of time.

8. Number Retaining Job For 90 Days. To be counted as retaining a job for 90 days, continuous employment with one or more employers for at least 90 days must be verified, and the definition for either placement or assisted placement into unsubsidized employment above is met. This allows clients who have moved into a position with a different employer to be recorded as retaining the job for 90 days as long as the client has been steadily employed for that length of time.

9. Rate of Placement Into Unsubsidized Employment. The rate of placement into unsubsidized employment is obtained by dividing the number placed into unsubsidized employment (HVRP), plus the number of assisted placements into unsubsidized employment by the number of clients enrolled.

10. Average Hourly Wage At Placement. The average hourly wage at placement is the average hourly wage rates at placement of all assisted placements plus direct placements.

11. Employability Development Services. This includes services and activities which will develop or increase the employability of the participant. Generally, this includes vocational counseling, classroom and on-the-job training, pre-employment services (such as job seeking skills and job search workshops), temporary or trial employment, sheltered work environments and other related services and activities. Planned services should assist the participant in addressing specific barriers to employment and finding a job. These activities may be provided by the applicant or by a subgrantee, contractor or another source such as the local Job Partnership Training Act program or the Disabled Veterans'Outreach Program (DVOP) personnel or Local Veterans' Employment Representatives (LVERs). Such services are not mandatory but entries should reflect the services described in the application and the expected number of participants receiving or enrolled in such services during each quarter. Participants may be recorded more than once if they receive more than one service.

12. Total Planned Expenditures. Total funds requested. Identify forecasted expenditures needed for each fiscal quarter.

13. Administrative Costs. Administrative costs shall consist of all direct and indirect costs associated with the supervision and management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors.

14. Participant Services. This cost includes supportive, training, or social rehabilitation services which will assist in stabilizing the participant. This category should reflect all costs other than administrative.

Appendix G

Direct Cost Descriptions For Applicants and Sub-Applicants*

Position Title(s)	Annual Salary/Wage Rate	% of Time Charged to Grant	Proposed Administration Costs **	Proposed Program Costs

	Administration	Program
Sub-Total		
Fringe Benefits For All Positions		
Contractual		
Travel		
Indirect Costs		
Equipment		
Supplies		
Total Costs		

** Administrative costs are associated with the supervision and management of the program and do not directly or immediately affect participants.

* Direct costs for all funded positions for both applicant and sub-applicant(s) must be provided.

[FR Doc. 00–2643 Filed 2–4–00; 8:45 am]
BILLING CODE 4510–79–C

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation Proposal/Award Information—Grant Proposal Guide

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by April 7, 2000 to be assured of consideration. Comments received after the date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 306–1125 x 2017 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Sciences Foundation Proposal/Award Information—Grant Proposal Guide".

OMB Approval Number: 3145–0058.

Expiration Date of Approval: June 30, 2002.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The missions of NSF are to: increase the Nation's base of scientific and engineering knowledge and strengthen its ability to support research in all areas of science and engineering; and promote innovative science and engineering education programs that can better prepare the Nation to meet the challenges of the future. The Foundation is committed to ensuring the Nation's supply of scientists, engineers, and science educators. In its role as leading Federal supporters of science and engineering, NSF also has an important role in national science policy planning.

Use of the Information: The regular submission of proposals to the Foundation is part of the collection of information and is used to help NSF fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new projects, and makes approximately 10,000 new awards. Support is made primarily through grants, contracts, and other agreements awarded to approximately 2,800 colleges, universities, academic consortia, nonprofit institutions, and small businesses. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (proposal review is cleared under OMB Control No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its information collection to identify and address excessive reporting burdens as well as to identify any real or apparent inequities based on gender, race, ethnicity, or disability of the proposed principal investigator(s)/project director(s) or the co-principal investigator(s)/co-project director(s).

Burden on the Public: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. An estimated 38,000 proposals are expected during the course of one year. These figures compute to an estimated 4,560,000 public burden hours annually.

Dated: February 2, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–2669 Filed 2–4–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Workshop Concerning the Revision of the Oversight Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Public Workshop.

SUMMARY: NRC will host a public workshop in Rockville, Maryland to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its oversight program for nuclear fuel cycle facilities. This workshop follows the recent public stakeholder workshop held in Rockville, Maryland on December 15, 1999. Presentations and other documents provided at each workshop, together with a transcript of each workshop, are placed on the NRC INTERNET web page (http://www.nrc.gov).

Similar to the revision of the oversight program for commercial nuclear power plants, NRC initiated an effort to improve its oversight program for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, "EVALUATION AND PROPOSED REVISION OF THE NUCLEAR FUEL CYCLE FACILITY SAFETY INSPECTION PROGRAM." SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose of Workshop

To obtain stakeholder views for improving the NRC oversight program for ensuring licensee and certificate holders maintain protection of worker and public health and safety, protection of the environment, and safeguards for nuclear material in the interest of national security. The oversight program applies to nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70, and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, and environment. In revising the oversight program, the goal is to have an oversight program that: (1) provides earlier and more objective indications of acceptable and changing safety and safeguards performance, (2) increases

stakeholder confidence in the NRC, and (3) increases regulatory effectiveness and efficiency. In this regard, the NRC desires the revised oversight program to be more risk-informed and performance-based and more focused on significant risks and poorer performers.

The workshop will focus on:

- Industry initiatives for identification, resolution, and correction of problems
- Objective and scope of safety and safeguards oversight program cornerstones
- Key safety and safeguards risk attributes for each cornerstone
- Safety and safeguards performance attributes the NRC needs to monitor and assess to ensure cornerstone objectives are met
- Performance monitoring attributes and means

DATES: The workshop, which is open for public participation, is scheduled for 8:00 a.m. to 5:00 p.m. on Tuesday, February 22, and Wednesday, February 23, 2000.

ADDRESSES: NRC's Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION, CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland this 1st day of February 2000.

For the Nuclear Regulatory Commission.

Walter Schwink,

Assistant Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 00–2709 Filed 2–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised Reactor Oversight Process Workshop

AGENCY: Nuclear Regulatory Commission

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the inspection, assessment, and enforcement processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a method for consistently determining the appropriate regulatory actions in response to varying levels of safety performance. The changes are the result of continuing work on a concept as described in SECY–99–007, "Recommendations for Reactor Oversight Process Improvements" dated January 8, 1999, and SECY–99–007A, "Recommendations for Reactor Oversight Improvements (Follow-Up to SECY–99–007)" dated March 22, 1999. On June 18, 1999, the Staff Requirements Memorandum on SECY–99–007 and SECY–99–007A was issued which approved the scope and concepts for the revised reactor oversight process (RROP), and approved the staff's plan for conducting a pilot program. The six-month pilot program for the RROP was conducted at two sites per region from May 30, 1999, to November 27, 1999. The purpose of the pilot program was to apply the RROP and collect lessons learned so that the various processes and procedures could be refined and revised as necessary prior to initial implementation.

Now that the pilot program is complete and lessons learned identified, the NRC will hold public workshops in each of the four NRC regions. The workshop will provide information to NRC, industry, and the public on the NRC's Revised Reactor Oversight Process that is currently scheduled to be implemented starting April 2, 2000, pending NRC Commission approval. The workshop will focus on the key attributes of the new oversight process and their associated program documents.

Information about the revised reactor oversight process and the pilot program is available on the Internet at: *www.nrc.gov/NRR/OVERSIGHT/index.html*

A preliminary agenda for the workshop will consist of the following:

Day 1: registration, background and concept review, workshop objectives, performance indicators—overview, performance indicator threshold review, examples, and recent changes

Day 2: baseline inspection program—overview, program review, procedure review, and recent changes supplemental inspection program, inspection planning and documentation regional inspection planning significance determination processes (SDP)—reactor and non-reactor, including recent changes

Day 3: reactor and non-reactor SDPs) examples of SDP and enforcement (parallel breakout sessions for enforcement and recent changes event response inspection activities assessment process, examples, and recent changes wrap-up/closing remarks

DATES: Registration for the workshop will be held from 8:00 to 10:00 on the first day of the workshop. There is no pre-registration. The workshop will run from 10:00 a.m. to 5:00 p.m. the first day and from 8:00 a.m. to 5:00 p.m. the second and third day.

Workshop Locations

Region III

Date: Feb 22–24

Address: Hilton Lisle/Naperville, IL, 3003 Corporate West Dr, Lisle, IL 60532.

Telephone: (630)–505–0900.

Special Rate: $89.00*

Cut off date: 1/31/2000

Region II

Date: March 6–8, 2000

Address: Georgia International Convention Center (Location is Tentative), 1902 Sullivan Road, College Park, GA 30337–0506.

Hotel: There are a number of Hotels in the immediate area. The convention center does not have sleeping facilities.

Region IV

Date: March 14–16, 2000.

Address: Wyndham Arlington, 1500 Convention Center Drive, Arlington, TX 76011.

Telephone: (800)–442–7275.

Special Rate: $77*.

Cut off date: 2/11/2000.

Region I

Dated: March 21–23, 2000.

Address: Holiday Inn, Independence Mall, 400 Arch Street, Philadelphia, PA.

Telephone: (800)–843–2355.

Special Rate: $139*.

Cut off date: 2/28/2000.

* Special group rate is available when registering with the hotel and asking for the "NRC's Regulatory Oversight Process Workshop" block of rooms. The group rate is subject to applicable state and local taxes and availability.

FOR FURTHER INFORMATION CONTACT: Alan Madison, Mail Stop: O5–H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U. S. Nuclear Regulatory Commission, Washington, DC 20555–001, telephone 301–415–1490.

Dated at Rockville, Maryland, this 31st day of January 2000.

For the Nuclear Regulatory Commission.

William M. Dean,

Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–2710 Filed 2–4–00; 8:45 am]

BILLING CODE 7590–01–U

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Unemployment Benefits and Employment Service, OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days). Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325.

RRB Form UI–1, Application for Unemployment Benefits and Employment Service, is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 also registers an unemployment claimant for the RRB's employment service. Significant non-burden impacting, formatting and editorial changes are being proposed to Form UI–1.

The RRB also utilizes Form UI–3, Claim for Unemployment Benefits, for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days. The RRB proposes minor non-burden impacting editorial changes to UI–3.

Completion of Forms UI–1 and UI–3 is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment. The RRB estimates that approximately 11,200 Form UI–1's are filed annually. Completion time is estimated at 10 minutes. The RRB estimates that approximately 67,500 Form UI–3's are filed annually. Completion time is estimated at 6 minutes.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–2615 Filed 2–4–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24271; 812–11954]

AirTouch Communications, Inc.; Notice of Application

January 28, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: AirTouch Communications, Inc. ("AirTouch") requests an order under section 3(b)(2) of the Act declaring that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

Filing Dates: The application was filed on January 24, 2000.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 2000, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. AirTouch, One California Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Michael Mundt, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (Tel. 202–942–8090).

Applicant's Representations

1. AirTouch is a Delaware corporation and a subsidiary of Vodafone AirTouch Public Limited Company ("Vodafone AirTouch"). AirTouch states that it is the third largest provider of cellular and personal communication services in the United States. Vodafone AirTouch owns approximately 96.8% of the outstanding voting securities of AirTouch. AirTouch states that at the present time it is not an investment company under section 3(a) of the Act.

2. On September 21, 1999, Vodafone AirTouch entered into an agreement with Bell Atlantic Corporation ("Bell Atlantic") to create a new joint venture ("Wireless"), a Delaware general partnership, through which they will conduct their U.S. wireless telecommunications business. AirTouch and Bell Atlantic will transfer their U.S. mobile telecommunications businesses and assets to Wireless (the "Transaction"), with AirTouch contributing approximately 46% of the value of its total unconsolidated assets. GTE Corp., following its merger with Bell Atlantic, also will contribute its cellular and personal communication services assets to Wireless. After contribution of these assets, AirTouch

will hold a 45% general partner interest in Wireless and Bell Atlantic will hold the remaining 55% general partner interest. The Transaction is expected to be consummated in early March 2000. AirTouch states that, following the Transaction, on an unconsolidated basis, approximately 62% of its total assets will consist of securities of operating companies that AirTouch controls (within the meaning of section 2(a)(9) of the Act), including Wireless, approximately 17% will consist of securities of wholly- and majority-owned subsidiaries, approximately 19% will consist of other securities, and approximately 2% will consist of assets other than securities.[1]

Applicant's Legal Analysis

1. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which are not investment companies and which are not excepted from the definition of investment company by section 3(c)(1) or section 3(c)(7) of the Act.

2. AirTouch states that as a result of the Transaction, it may meet the definition of an investment company under section 3(a)(1)(C) of the Act because Wireless will not be a wholly- or majority-owned subsidiary and, therefore, AirTouch's "investment securities," as defined in section 3(a)(2) of the Act, may represent approximately 81% of its total assets on an unconsolidated basis.

3. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the SEC may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. AirTouch requests an order under section 3(b)(2) declaring that it is primarily engaged through its wholly- and majority-owned subsidiaries and controlled companies in a business other than that of investing, reinvesting, owning, holding, or trading in securities.[2]

4. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the SEC considers: (a) The applicant's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.[3]

(a) *Historical Development.* AirTouch states that it has been an operating company since 1984, developing mobile telecommunications networks and providing telecommunications services in the U.S. and, beginning in 1989, overseas.

(b) *Public Representations of Policy.* AirTouch states that it has never held, and does not now hold, itself out as an investment company. AirTouch asserts that, in its annual reports, shareholder communications, prospectuses, SEC filings, and on its Internet web site, it consistently has held itself out to the public as an operator of mobile telecommunications networks and provider of telecommunications services.

(c) *Activities of Officers and Directors.* AirTouch states that its officers and directors are actively engaged in the management of its wholly- and majority-owned subsidiaries and controlled companies through which AirTouch conducts its telecommunications business. AirTouch states that it has approximately 14,000 full-time employees, only two of whom spend any time on investment activities.

(d) *Nature of Assets.* AirTouch states that, as of September 30, 1999, its assets other than securities, together with securities of wholly- and majority-owned subsidiaries, represented approximately 65%, securities and controlled companies represented approximately 16%, and other securities represented approximately 19% of its total assets on an unconsolidated basis. AirTouch further states that, following the consummation of the Transaction, on a pro forma basis, its assets other than securities, together with securities of wholly- and majority-owned subsidiaries, will represent approximately 19%, securities of controlled companies, including Wireless, will represent approximately 62%, and other securities will represent approximately 19% of its total assets on a unconsolidated basis.

(e) *Sources of Income.* AirTouch states that for the twelve months ended March 31, 1999, it had net income of $844 million, of which 40.1% was attributable to its wholly- and majority-owned subsidiaries, 45.3% was attributable to controlled companies,and 14.6% was attributable to investments. AirTouch states that post-Transaction, on a pro forma basis, for the twelve months ended March 31, 1999, its net income was $925 million, of which 86.7% was attributable to controlled companies, including Wireless, and 13.3% was attributable to investments.

5. AirTouch thus states that it meets the factors that the SEC considers in determining whether an issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2605 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

[1] Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.

[2] If the requested order is granted, Vodafone AirTouch's counsel have advised Vodafone AirTouch that it is not an investment company under section 3(a) of the Act.

[3] *See Tonopah Mining Company of Nevada,* 26 S.E.C. 426, 427 (1947).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42362; File No. SR–OPRA–00–02]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

January 28, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 28, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and

[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The amendment proposes to allocate the message handling capacity of OPRA's processor among the participant exchanges for a temporary period ending March 4, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's (*i.e.*, Securities Industry Automation Corporation) aggregate message handling capacity.[3] The Commission is publishing this notice and order to solicit comments from interested persons on the proposed Plan amendment, and to grant accelerated approval to the proposed Plan amendment through March 4, 2000.

I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to allocate the message handling capacity of its processor among the participant exchanges for a temporary period ending March 4, 2000, to minimize the likelihood that during this period the total number of messages generated by the participants will exceed the processor's aggregate message handling capacity. During this period, the processor's aggregate message-handling capacity, which is estimated by the processor to be 3,110 messages per second, will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 910 messages per second
Chicago Board Options Exchange: 1,210 messages per second
Pacific Exchange: 545 messages per second
Philadelphia Stock Exchange: 445 messages per second

OPRA proposes to allocate the message handling capacity of its processor in response to significant increases in the number of options quotations that have recently been experienced by all of the participant exchanges as a result of the greater number of options series being traded on the exchanges and the heightened volatility in the underlying securities. Although the aggregate amount of options market information messages is generally still within the capacity of the OPRA processor, the aggregate options message traffic is now so close to reaching the processor's maximum message-handling capacity that some short-term solution to the problem is necessary to avoid risking unacceptable delays and queuing in the dissemination of real-time options market information. Although some long-term solutions have been proposed in the course of the Options Capacity Planning and Quote Mitigation Program that has been taking place over the past several months, these may not be in place soon enough to deal with the current expansion of message traffic.[4] For this reason, during the month of January 2000, OPRA's participant exchanges agreed upon a capacity allocation based upon an assumed maximum processor capacity of 3,000 messages per second.[5] OPRA's processor now estimates that the capacity allocation may prudently be adjusted upwards to reflect an assumed maximum processor capacity of 3,110 messages per second. Accordingly, OPRA's participant exchanges, in the presence of Commission staff pursuant to the September 1999 Order, have agreed to the allocation that is proposed in this filing to be effective during February 2000. Because this allocation is based upon an assumed maximum processor capacity of 3,110 messages per second, which the processor advises is a realistic number, it should serve the intended purpose of avoiding delays and queues in OPRA's real-time stream of market information.

To retain sufficient flexibility to deal with changed circumstances within and among the options markets, including the planned commencement of options trading by the International Securities Exchange, the proposed allocations will remain in effect only until March 4, 2000, unless OPRA decides that the proposed allocation or some revised allocation should be continued beyond that date.[6]

II. Implementation of the Plan Amendment

OPRA believes the temporary implementation of the proposed capacity allocation program is essential to avoid delays and queues in the dissemination of options market information, which in turn is necessary to achieve the objective of Section 11A(a)(1)(C)(iii),[7] including to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Accordingly, OPRA requests the Commission to permit the proposed allocation program to be put into effect summarily upon publication of notice of this filing, on a temporary basis, pursuant to paragraph (c)(4) of Rule 11Aa3–2,[8] based on a finding by the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to file number SR–OPRA–00–2 and should be submitted by February 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment

After careful review, the Commission finds that the proposed Plan amendment is consistent with the requirements of the Act and the rules

[3] OPRA has determined to treat this proposed capacity allocation as an amendment to its national market system plan and, accordingly, to file the proposed capacity allocation for Commission review and approval pursuant to paragraph (b) of Rule 11Aa3–2. Any determination made by OPRA to continue the effectiveness of the proposed capacity allocations or any revised capacity allocations beyond March 4, 2000 will be the subject of a separate filing under the same Rule.

[4] *See* Exchange Act Release No. 41843 (September 8, 1999) in which the Commission issued an order authorizing the options exchanges, OPRA, OPRA's processor and other parties to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic and related matters ("September 1999 Order").

[5] *See* Exchange Act Release No. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (File No. SR–OPRA–00–01).

[6] Any such continued allocation of OPRA capacity that might be approved by OPRA would be the subject of a separate filing under Rule 11Aa3–2. 17 CFR 240.11Aa3–2. *See* note 3, *supra*.

[7] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[8] 17 CFR 240.11Aa3–2(c)(4).

and regulations thereunder.[9] Specifically, the Commission believes that the proposed amendment, which allocates the limited capacity of the OPRA system among the options markets, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent an agreed-to program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the options markets. The Commission believes that the agreed-upon allocation proposal is a reasonable means for addressing potential strains on capacity that may occur between now and March 4, 2000.

The Commission finds good cause to accelerate the proposed Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the proposed Plan amendment is intended to allocate OPRA system capacity for a short period of time to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message traffic. The commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate and possibly, implement, other quote mitigation strategies. In addition, the limited time frame of the applicability of the capacity allocation program should provide the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed Plan amendment is appropriate and consistent with Section 11A of the Act.[10]

[9] In approving this proposed Plan amendment, the Commission has considered the proposal's impact on efficiency, competition,and capital formation. 15 U.S.C. 78c(f).

V. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act,[11] that the proposed Plan amendment (SR–OPRA–00–02) is approved on an accelerated basis through March 4, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2607 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78k–1.

[11] 17 CFR 240.11Aa3–02.

[11] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42371; File No. SR–CBOE–99–63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Exercise Price Intervals for FLEX Equity Options

January 31, 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 December 10, 1999, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to delete Interpretation .01 of CBOE Rule 24A.4(c)(2)[3] which limits exercise price intervals and exercise prices for FLEX Equity call options to those that apply to Non-FLEX Equity call options. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved this Interpretation in 1996. *See* Release No. 34–37726 (September 25, 1996), 61 FR 51474 (October 2, 1996).

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete Interpretation .01 under CBOE Rule 24A.4(c)(2). This interpretation limits the exercise price intervals and exercise prices available for FLEX Equity call options to those intervals and prices that are available for Non-FLEX Equity call options pursuant to Interpretation and Policy .01 under CBOE Rule 5.5. This policy was intended to eliminate uncertainty concerning what constitutes a "qualified" covered call for certain purposes under the Internal Revenue Code pending clarification of this tax issue.

Currently, under Section 1092(c)(4)(B) of the Internal Revenue Code, certain covered short positions in call options qualify for advantageous tax treatment if the options are not in the money by more than a specified amount at the time they are written. One measure used to determine whether a call option is qualified is whether its exercise or "strike" price is no lower than the "lowest qualified benchmark price," which is generally the highest strike price available for trading that is less than the current price of the underlying stock. Since the exercise prices of FLEX Equity Options are not subject to the same intervals that apply to Non-FLEX Equity Options, this has raised the question whether the existence of a series of FLEX Equity Options with a strike price of, for example, 58 when the price of the underlying stock is 59 would disqualify a Non-FLEX call option with a strike price of 55, which would otherwise be the highest strike price available that is less than the price of the stock.

The Internal Revenue Service ("IRS") reviewed this issue and proposed rulemaking that would not require that strike prices established by equity options with flexible terms be taken into account in determining whether standard term equity options are too deep in the money to receive qualified covered call treatment.[4] The IRS approved this proposal on January 25, 2000.[5] The effect of the IRS rulemaking and the Exchange's proposed withdrawal of the limitation on the exercise price of Equity FLEX call options is that certain taxpayers, particularly institutional and other large investors, can engage in transactions in Equity FLEX call options with a wider range of exercise prices (as was originally intended) without affecting the applicability of Section 1092 of the Internal Revenue Code for qualified covered call options involving equity options with standard terms.

The Exchange believes that the proposed rule change, by eliminating a restriction on Equity FLEX call options which has restricted their usefulness as a risk managing mechanism, will remove impediments to and perfect the mechanism of a free and open market in FLEX Equity Options, and thus is consistent with the objectives of Section 6(b)(5)[6] of the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5)[7] of the Act in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent wit the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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 CBOE. All submissions should refer to File No. SR–CBOE–99–63 and should be submitted by February 28, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[8] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[9] of the Act. Section6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to a free and open market and to protect investors and the public interest.

The Commission believes that the proposal allows sophisticated, high net-worth investors to take full advantage of FLEX options. In part, FLEX options were created to allow investors to manage their risks by having the ability to negotiate strike prices, contract terms for exercise style (*i.e.*, American, European, or capped), and expiration dates. However, because of the potential adverse tax effect on qualified covered calls, the Exchange limited FLEX call strike prices to those available for standardized equity calls. Now that the tax issue has been clarified, this limitation is being removed. With the removal of this limitation, the Commission believes that sophisticated, high net-worth investors will better be able to take advantage of the risk-management mechanisms provided by FLEX options.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** A virtually identical proposal, SR–CBOE–98–39, was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comment.[11] CBOE later withdrew SR–CBOE–98–39 because the IRS had not yet acted on its proposed rulemaking. The current proposal mirrors the changes that were originally proposed in SR–CBOE–98–39. In addition, the proposal allows FLEX options to be used as they were originally intended to be used, and therefore raises no new regulatory issues. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.[12]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–98–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2606 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42365; File No. SR–Phlx–99–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Registration of Trading Floor Personnel

January 28, 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 November 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange")

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[4] Department of the Treasury, IRS REG–104641–97, 63 FR 34616 (June 25, 1998).

[5] Department of the Treasury, IRS REG–104641–97, 65 FR 3812 (January 25, 2000).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] The Commission expects that the Options Disclosure Document ("ODD") will promptly be amended to reflect the removal of the risk strike price limitation for FLEX equity call options. *See* October 1996 Supplement to the ODD. Telephone call between Timothy Thompson, Director, Regulatory Affairs, CBOE, and Katherine A. England, Assistant Director, Division of Market Regulation, Commission, on January 31, 2000.

[11] *See* Release No. 34–40584 (October 21, 1998), 63 FR 58080 (October 29, 1998) (notice of filing of SR–CBOE–98–39.)

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt new Phlx Rule 620, Trading Floor Registration. The proposed rule requires that all trading floor personnel be registered with the Exchange; trading floor personnel successfully complete specified examinations,[3] and all member/participant organizations notify the Exchange of any change in the status of such personnel. The Exchange also is proposing to amend Regulation 7(b), Required Filing for Floor Member Firm Employee Status Notices with the Exchange, to include members, non-members and clerks to be consistent with the test of new Phlx Rules 620.[4] Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 620. Trading Floor Registration

(a) Trading Floor Member Registration—Registered Options Trader on any Exchange trading floor must register as such with the Exchange by completing the appropriate form(s) (with period updates submitted by the firm, as determined by the Exchange) and successfully complete the appropriate floor trading examination(s), if prescribed by the Exchange, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the trading status of any such members/participant who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

(b) Non-member/Clerk Registration—All trading floor personnel, including clerks, interns, stock execution clerks and any other associated person, of member/participant organizations not required to register pursuant to Rule 620(a) must register as such with the Exchange by completing the appropriate form(s) for non-registered persons (with periodic updates submitted by the firm, as determined by the Exchange). Further, the Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the status of any such personnel of a member/participant organization who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

* * * * *

Regulation 7

(a) No Change

(b) Required Filing for Floor Member Firm Employee Status Notices with the Exchange

Following the termination of, or the initiation of a change in the trading status of any *member/participant or any non-member/clerk and trading floor personnel including clerks, interns, stock execution clerks and any other associated person, of member/participant organizations* [employee of a member/participant firm] who have been issued an Exchange access card and trading floor badge, *the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and* [a completed "Status Notice" must be] submitted to the *appropriate Exchange Department* [Director of Regulatory Services of the exchange] as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Further, every effort should be made to obtain the employee's access card and trading floor badge and to submit these to the *appropriate Exchange Department* [Security Department].

1st Occurrence	$100.00
2nd Occurrence	$200.00
3rd Occurrence and Thereafter.	Sanction is discretionary with the Business Conduct Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change requires, in a single Exchange rule, all floor personnel to be registered with the Exchange and all member/participant organizations to notify the Exchange of any change in the status of such personnel. The Phlx believes that this will enable the Exchange to more efficiently monitor individuals on the Exchange's trading floors, as well as their current status.

Currently, Regulation 7(b) governs the termination of, or the initiation of change in the trading status of, an employee of a member/participant firm who has been issued an exchange access card and trading floor badge. New Phlx Rule 620 codifies Regulation 7(b) into a more comprehensive Exchange Rule. Phlx Rule 620(a) sets forth a comprehensive rule that addresses registration, examinations, termination

[3] The Phlx's current practice is to administer an examination to specialists, market makers and other floor trading personnel before giving them access to the trading floor. This examination, developed by the Phlx, is undergoing conversion from a paper test to a computer-generated test of 100 random questions covering Phlx trading rules. Although the Phlx does not currently administer an examination to clerks and other "non-member" floor personnel, the Phlx will explore the feasibility of such a test during the current year. Telephone conversion among Adrienne Hart, First Vice President, Regulatory Group, Cynthia Hoekstra, Counsel, Phlx, and Joseph Morra and Geoffrey Pemble, Attorneys, Division of Market Regulations, SEC, December 10, 1999.

[4] Regulation 7 was enacted pursuant to Phlx Rule 60, Assessments for Breach of Regulations. *See* Securities Exchange Act Release No. 27629 (January 16, 1990), 55 FR 2469 (Jan. 24, 1990) (File No. SR–Phlx–90–1).

and change in status of trading floor members, which includes floor brokers, specialists, and market makers, including Registered Options Traders on any Exchange trading floor. Phlx Rule 620(b) addresses non-member/clerk registration of all trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons of member/participant organizations who are not required to be registered pursuant to Phlx Rule 620(a).[5]

The exchange believes that the proposal to require all floor personnel to be registered with the Exchange and to require all member/participant organizations to notify the exchange of any change in the status of such personnel is consistent with Section 6 of the Act,[6] in general, and with Sections 6(b)(5)[7] and 6(c)(3)(B),[8] in particular. Specifically, new Phlx Rule 620 is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest by ensuring that all trading floor personnel are properly registered and, thus, monitored. In addition, Section 6(c)(3)(B)[9] provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the Exchange and require any person associated with a member, or any class of such persons, to be registered with the Exchange in accordance with procedures so established.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20540–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–46 and should be submitted by February 28, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–2662 Filed 2–4–00; 8:45 am]

BILLING CODE 8010–01–M

[5] The Exchange presently requires the completion of forms and procedures for registering new floor members pursuant to various Phlx Rules, including Rule 202, Registrant (Specialists); Rule 214, Violations of Rules (Specialists); Rule 604, Registration and Termination of Registered Person; Rule 623, Fingerprinting; Rule 1020, Registration and Functions of Options Specialists; Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; and Rule 1061, Registration of Floor Brokers.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Appointment of Member to Agency Performance Review Board

AGENCY: Office of Special Counsel (OSC).

ACTION: Notice.

Authority: 5 U.S.C. § 4314(c)(4).P='04'≤

SUMMARY: This notice announces the appointment of the following individual to serve as a new member of the Performance Review Board previously established by the OSC pursuant to 5 U.S.C. 4314(c)(2): Steven J. Mandel, Associate Solicitor, Fair Labor Standards Division, Office of the Solicitor, U.S. Department of Labor.

FOR FURTHER INFORMATION, CONTACT: M. Marie Glover, Director of Personnel, Management Division, U.S. Office of Special Counsel, 1730 M Street, NW, Washington, DC 20036–4505, telephone (202) 653–8964.

Dated: February 1, 2000.

Elaine Kaplan,

Special Counsel.

[FR Doc. 00–2634 Filed 2–4–00; 8:45 am]

BILLING CODE 7405–01–U

DEPARTMENT OF STATE

[Public Notice 3217]

Culturally Significant Objects Imported for Exhibition Determinations: "The Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Renaissance Portrait in Northern Italy: The Art of Giovanni Battista Moroni," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Kimbell Art Museum, Fort Worth, Texas, from on or about

February 27, 2000, to on or about May 28, 2000, is in the national interest.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Lorie J. Nierenberg, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6084). The address is U.S. Department of State, SA–44; 301–4th Street, S.W., Room 700, Washington, DC 20547–0001.

Dated: January 31, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–2713 Filed 2–4–00; 8:45 am]

BILLING CODE 4710–08–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 2000–2–1; Docket OST–99–5798]

Application of Cardinal Airlines, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Cardinal Airlines, Inc., fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 17, 2000.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–99–5798 and addressed to Department of Transportation Dockets (SVC–124, Room PL–401), 400 Seventh Street, SW, Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: February 1, 2000.

Robert S. Goldner,

Acting Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–2677 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

Federal Highway Administration

Woodrow Wilson Bridge; Potomac River, District of Columbia and Prince George's County, MD

AGENCY: Federal Highway Administration, Coast Guard, DOT.

ACTION: Notice of public hearings; correction.

SUMMARY: This document contains corrections to the notice of public hearings which was published January 6, 2000 (65 FR 801). The notice announced the dates and locations of two public hearings to receive information concerning the environmental and navigational impacts of the replacement of the Woodrow Wilson Bridge, but the notice did not contain the snow dates for these meetings.

DATES: This correction is effective on February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John Gerner, Project Manager (FHWA), Woodrow Wilson Bridge Center, 1800 Duke Street, Suite 200, Alexandria, Virginia 22314 (703 519–9800); Mr. N.E. Mpras, Chief, Office of Bridge Administration, Commandant (G–OPT), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 (202 267–0368); or Ms. Ann Deaton, Chief, Bridge Administration Branch, Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (757 398–6222).

SUPPLEMENTARY INFORMATION:

Need for Correction

The Federal Highway Administration and the Coast Guard published a document in the Federal Register of January 6, 2000 (65 FR 801), which announced the dates and location of two public hearings to receive information concerning the environmental and navigational impacts of the replacements of the Woodrow Wilson Bridge. That document failed to publish alternative snow dates for these meetings. This document corrects that oversight.

In notice FR Doc. 00–258 published on January 6, 2000 (65 FR 801), make the following corrections: On page 801, second column, under **DATES:** correct the first sentence to read "The hearing will start 7 p.m. on Tuesday, February 8, (snow date February 15) and Thursday, February 10, 2000, (snow date February 16) and display materials will be available beginning at 5:30 p.m. on these dates."

Dated: February 2, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard Director of Operations Policy.

[FR Doc. 00–2694 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, Connecticut

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 8, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England

Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose use a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 20, 2000, the FAA determined that the application to impose and use a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 2000.

The following is a brief overview of the impose and use application.

PFC Project #: 00–10–C–00–BDL.

Level of the proposed PFC: $3.00.

Charge effective date: July 1, 2000.

Estimated charge expiration date: January 1, 2001.

Estimated total PFC revenue: $4,358,000.

Brief description of projects:

Impose project: Construction and Installation of Instrument Landing System—CAT II/III Runway 24.

Impose and Use projects: Acquisition Snow Removal Equipment; and Upgrade of Surface Condition Monitoring System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may insect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on January 26, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–2673 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Environmental Impact Statement: Linn County, Iowa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental environmental impact statement will be prepared for a proposed roadway and bridge project at Cedar Rapids in Linn County, Iowa.

FOR FURTHER INFORMATION CONTACT: Philip Taylor, Assistant Transportation Engineer, Federal Highway Administration, Iowa Division Office, 105 6th Street, Ames, Iowa 50010, Telephone: (515) 233–7307. Harry S. Budd, Director, Office of Project Planning, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone: (515) 239–1391.

SUPPLEMENTARY INFORMATION:

Electronic Access

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 **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara

Background

The FHWA, in cooperation with the Iowa Department of Transportation (Iowa DOT), will prepare a supplement to the environmental impact statement (FHWA–Iowa–EIS–78–4–DS) for the proposed construction of the extension of Iowa 100 around Cedar Rapids. The proposed project begins at U.S. 30 west of Cedar Rapids and extends north and northeast to existing Iowa 100 at Edgewood Road. The supplement to the environmental impact statement will evaluate a proposed four-lane, controlled access roadway connected by a bridge across the Cedar River. Total length of the proposed project is approximately 12.9 km (8.0 mile).

The proposed project is considered necessary to complete the highway loop around Cedar Rapids and alleviate congestion on several major arterial highways. It is also needed to reduce traffic congestion on Interstate-380 and other major arterials, provide another more northern river crossing for truck traffic, reduce transportation costs and social environmental impacts elsewhere in Cedar Rapids, and enhance economic development.

The environmental impact statement (FHWA–Iowa–EIS–78–4–F) was approved October 6, 1980. A supplement to the 1980 EIS is being prepared to examine new information and changes that were not addressed in the 1980 EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will be sought throughout the analysis of this proposal. In addition, a public hearing will be offered. A scoping meeting with interested public agencies was held September 15, 1999, to identify significant environmental issues that should be addressed. The participating agencies will be kept informed of any significant changes in the scope of the environmental analysis. Public notice will be given of the time and place of all public meetings. The draft supplemental environmental impact statement will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the supplement to the EIS should be directed to the FHWA or Iowa DOT at the addresses provided under the caption **FOR FURTHER INFORMATION CONTACT.**

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

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Dated: January 31, 2000.

Bobby W. Blackmon,

Division Administrator.

[FR Doc. 00–2614 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Global Positioning System (GPS) Technology Pilot Demonstration Project; Extension of Deadline for Submission of Applications

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of extension of deadline for submission of applications to participate in pilot demonstration project.

SUMMARY: The FMCSA is extending the deadline for motor carriers to submit applications to participate in the agency's Global Positioning System (GPS) technology pilot demonstration project. This project allows qualified motor carriers that use GPS technology and related safety management computer systems to enter into an agreement with the FMCSA to use such systems to record and monitor drivers' hours-of-service, in lieu of requiring them to prepare handwritten records of duty status. This project is intended to demonstrate that the motor carrier industry can use this technology to improve compliance with the hours-of-service requirements in a manner which promotes safety and operational efficiency while reducing paperwork.

DATES: Applications must be received on or before December 29, 2000.

ADDRESSES: Written applications should be mailed to: GPS Technology Pilot Demonstration Project, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001, or Mr. Charles Medalen, Office of Chief Counsel (HCC–20), (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Application requests and specific questions regarding this pilot demonstration project may also be directed to the contact person(s) named in this notice or the Division Offices of the FMCSA in your State.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer 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 home page at: *http://www.nara.gov/fedreg*and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Creation of New Agency

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748). The new statute established the FMCSA in the Department of Transportation. On January 4, 2000, the Office of the Secretary published a final rule rescinding the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS's Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Resource Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. For the time being, all phone numbers and addresses are unchanged.

Background

On September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers to use certain automatic on-board devices to record their drivers' duty status in lieu of the handwritten records required by 49 CFR 395.8. This provision is now codified at 49 CFR 395.15. Many motor carriers employing this technology found that their compliance with the hours-of-service regulations improved. New technologies are emerging, however, and the current on-board recorder provision is becoming obsolete. Before considering changes to the rule, the agency determined that it would be prudent to demonstrate the effectiveness of more recent technology for ensuring compliance with the hours-of-service regulations.

On April 6, 1998 (63 FR 16697), the FHWA announced a pilot project that would allow motor carriers to use GPS technology and related computer programs to monitor compliance with the hours-of-service regulations. Drivers would be exempted from the requirement to maintain paper logs. Werner Enterprises, Inc., was the first carrier to enter into an agreement with the FHWA to use GPS technology for this purpose.

On July 13, 1999 (64 FR 37689), the FHWA extended the deadline for submission of applications to participate in the GPS technology pilot demonstration project. The agency indicated that it had received letters and telephone calls from various entities expressing interest in participating in the program and that two of these entities had acquired the software necessary to participate. The agency also indicated that other entities would soon have the hardware and software necessary. To date, however, Werner Enterprises, Inc. is the only carrier operating under an agreement with the agency to use GPS technology to monitor drivers' hours-of-service.

Reason for Extending the Application Deadline

The FMCSA believes GPS technology and many of the complementary safety management computer systems currently available to the motor carrier industry provide at least the same degree of monitoring accuracy as 49 CFR 395.15. The FMCSA also believes extending the application deadline to enable other motor carriers to participate will help to demonstrate that the use of technology to reduce paperwork and minimize recordkeeping burdens is consistent with highway safety.

The FMCSA continues to receive letters or telephone calls from motor carriers expressing interest in participating in the GPS pilot demonstration project. Many of these motor carriers are either considering modifications to their current GPS technology programs, or planning to have changes made to GPS technology being purchased, in order to meet the hardware and software requirements for participation in the pilot demonstration project. The FMCSA is extending the application deadline until December 29, 2000, to provide these motor carriers with an opportunity to participate in the pilot demonstration project once they have in place the hardware and software needed to satisfy the criteria for participation. Motor carriers that wish to participate in the pilot demonstration project must have GPS technology and complementary safety management computer systems which meet all of the

conditions specified in the April 6, 1998, notice.

Authority: 49 U.S.C. 31136, and 31502; and 49 CFR 1.73.

Issued on: January 26, 2000.

Julie Anna Cirillo,

Acting Deputy Administrator.

[FR Doc. 00–2675 Filed 2–4–00; 8:45 am]

BILLING CODE 4010–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–6853]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Walker, Maritime Administration, MAR 810, 400 Seventh St., SW, Room 7209, Washington, DC 20590. Telephone: 202–366–8888, or FAX 202–366–6988.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Inventory of American Intermodal Equipment.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0503.

Form Numbers: None.

Expiration Date of Approval: September 30, 2000.

Summary of Collection of Information: The collection consists of an intermodal equipment inventory that provides data essential to both the government and the transportation industry in planning for the most efficient use of intermodal equipment.

Need and Use of the Information: The information contained in the inventory provides data about U.S.-based companies that own or lease intermodal equipment and is essential to both government and industry in planning for contingency operations.

Description of Respondents: The report requests information from U.S. steamship and intermodal equipment leasing companies.

Annual Responses: 22.

Annual Burden: 66 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility; accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: February 2, 2000.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 00–2711 Filed 2–4–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2000-6854]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval for three years of an existing information collection entitled "Seamen's Claims; Administrative Action and Litigation."

DATES: Comments should be submitted on or before April 7, 2000.

FOR FURTHER INFORMATION CONTACT: Otto A. Strassburg, Chief, Division of Marine Insurance, Office of Insurance and Shipping Analysis, Maritime Administration, 400 Seventh Street, SW, Room 8117, Washington, D.C. 20590, telephone number—202–366–4161. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Seamen's Claims; Administrative Action and Litigation.

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0522.

Form Number: None.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: The collection of information is obtained from claimants for death, injury or illness suffered while serving as officers or members of a crew employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration (MARAD), or successor.

Need and Use of the Information: The information obtained will be evaluated by MARAD officials to determine if the claim is fair and reasonable. If the claim is allowed it is settled, a release is obtained from the claimant verifying consummation of the settlement, and payment is made to the claimant.

Description of Respondents: Officers or members of a crew who suffered death, injury, or illness while employed on vessels as employees of the United States through the National Shipping Authority, Maritime Administration, or successor. Also included in this description of respondents are surviving dependents, beneficiaries, and/or legal representatives of officers or crew members.

Annual Responses: 250 responses.

Annual Burden: 3,125 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Dated: February 2, 2000.

By Order of the Maritime Administrator.
Joel C. Richard,
Secretary.
[FR Doc. 00–2712 Filed 2–4–00; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–2000–6845]

Request for OMB Clearance of an Information Collection; Customer Satisfaction Surveys

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Transportation Statistics (BTS) intends to request approval from the Office of Management and Budget for an information collection, its Customer Satisfaction Surveys. Before submitting its request, BTS is publishing this notice to invite public comment on the continuing need and usefulness of BTS collecting this information.

DATES: You must submit your written comments by April 7, 2000.

ADDRESSES: Please send comments to the Docket Clerk, Docket No. BTS–2000–6845, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

You only need to submit one copy. If you would like the Department to acknowledge receipt of the comments, you must include a self-addressed stamped postcard with the following statement: Comments on Docket BTS–2000–6845. The Docket Clerk will date stamp the postcard and mail it back to you. If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information. This website can also be used to read comments received.

FOR FURTHER INFORMATION CONTACT: Heather M. Contrino, Office of Statistical Programs and Services, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, telephone number 202/366–6584, email heather.contrino@bts.gov.

SUPPLEMENTARY INFORMATION:

Title: Customer Satisfaction Surveys.
OMB Control Number: 2139–0007.
Type of Request: Extension of a currently approved collection.
Needs and Uses: Executive Order 12862, Setting Customer Service Standards, directs BTS to conduct surveys to determine the kind and quality of services and products our customers want and their level of satisfaction with existing services and products. BTS will use the information it collects to improve product development and service delivery and determine whether additional products and services are needed.
Description of Survey Topics: In 1998 and 1999, the BTS Customer Survey Program included two surveys—the Product Evaluation Survey (PES) and the Customer Satisfaction Survey (CSS). The main objective of the PES was to give BTS a better understanding of the technical preferences and information needs of specific users. While it provided information on levels of customer satisfaction, the PES focused on products. The main objective of the CSS was to provide information about the overall satisfaction of BTS customers, the frequency of use of products and services, and specific information on how BTS is meeting various customer service criteria. Although the CSS addresses some product issues such as format compatibility and difficulty of use, those were not the main objectives of the survey.

In the next three years, BTS anticipates surveys in two areas—products and services. The product survey is a continuation of the CSS and PES and will sample the population of BTS customers who have ordered BTS products. The survey will obtain information on overall levels of customer satisfaction, technical preferences, and informational needs of customers. In addition, it will obtain feedback from customers on specific BTS products.

The services surveys will provide BTS with feedback on the services it provides to the general public and to other agencies in the Department of Transportation. Through these surveys, BTS will obtain feedback on the quality, completeness, utility, responsiveness, and timeliness of its Statistical Information Line, National Transportation Library, website, and BTS-sponsored workshops.

Burden Statement: The total annual respondent burden estimate is 1,665 hours. The number of respondents and average burden hour per response will vary with each survey.

Public Comments Invited: BTS requests comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the Bureau of Transportation Statistics; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information, including the use of automated collection techniques or other forms of information technology. BTS will summarize the comments submitted in response to this notice in its request for OMB clearance.

Susan Lapham,
Acting Associate Director for Statistical Programs and Services.
[FR Doc. 00–2676 Filed 2–4–00; 8:45 am]
BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Gerling Global Reinsurance Corporation of America

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 12 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6779.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable reinsurer on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 35895 to reflect this addition: *Gerling Global Reinsurance Corporation of America. Business address: 717 Fifth Avenue, New York, NY 10022.* Phone: (212) 754–7500. Underwriting Limitation b/: $34,265,000. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at

http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 24, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–2603 Filed 2–4–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension, parents' dependency and indemnity compensation (DIC), and spina bifida programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one year period ending September 30, 1999. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 2000, which began on October 1, 1999.

DATES: These COLAs are effective December 1, 1999. The headstone or marker allowance rate is effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (212A), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Under former 38 U.S.C. 2306(d), VA was authorized to provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the lesser of the actual cost of the non-Government headstone or marker or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased.

Section 8041 of Pub. L. 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O.G.C. Prec. 17–90), VA's General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1999 under the above computation method was $90. Therefore, effective October 1, 1999, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 2000 is $90.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.4 percent cost-of-living increase in Social Security benefits effective December 1, 1999. Therefore, applying the same percentage and rounding up in accordance with 38 CFR 3.29, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1999:

TABLE 1.—IMPROVED PENSION

Maximum annual rates
(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $8,989
Veteran with one dependent, $11,773
For each additional dependent, $1,532
(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $14,999
Veteran with one dependent, $17,782
For each additional dependent, $1,532
(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $10,987
Veteran with one dependent, $13,771
For each additional dependent, $1,532
(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $11,773
Either veteran in need of aid and attendance, $17,782
Both veterans in need of aid and attendance, $23,168
Either veteran housebound, $13,771
Both veterans housebound, $15,770
One veteran housebound and one veteran in need of aid and attendance, $19,777
For each dependent child, $1,532
(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $6,026
Surviving spouse and one child in his or her custody, $7,891

TABLE 1.—IMPROVED PENSION—Continued

Maximum annual rates
For each additional child in his or her custody, $1,532
(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $9,635
Surviving spouse with one child in custody, $11,497
Surviving Spouse of Spanish-American War veteran alone, $10,258
Surviving Spouse of Spanish-American War veteran with one child in custody, $12,119
For each additional child in his or her custody, $1,532
(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $7,367
Surviving spouse and one child in his or her custody, $9,228
For each additional child in his or her custody, $1,532
(8) Surviving child alone (38 U.S.C. 1542), $1,532

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $2,037. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $429 reduced on the basis of the parent's annual income according to the following formula:

TABLE 2

For each $1 of annual income		
The $429 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$800
.08	$800	10,226

No DIC is payable under this table if annual income exceeds $10,226.

One parent who has remarried. if there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $309 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

For each $1 of annual income		
The $309 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	10,226

No DIC is payable under this table if annual income exceeds $10,226.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $289 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

For each $1 of annual income		
The $289 monthly rate shall be reduced by	Which is more than	But not more than
$.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	13,746

No DIC is payable under this table if combined annual income exceeds $13,746.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $230 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $10,226 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $10,726 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $13,746 (Pub. L. 95–588, section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $14,246 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(5) Child (no entitled veteran or surviving spouse), $8,358 (Pub. L. 95–588, section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $3,262 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,951 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $12,905 (Pub. L. 95–588, section 306(b)).

Spina Bifida Benefits

Section 421 of Public Law 104–204 added a new chapter 18 to title 38, United States Code, authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with spina bifida who are natural children of veterans who served in the Republic of Vietnam during the Vietnam era. Pursuant to 38 U.S.C. 1805(b)(3), spina bifida rates are subject to adjustment under the provisions of 38 U.S.C. 5312, which provides for the adjustment of certain VA benefit rates whenever there is an increase in benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.). Effective December 1, 1999, spina bifida monthly rates are as follows:

Level I $213

Level II $743

Level III $1,272

Dated: January 24, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 00–2636 Filed 2–4–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 65, No. 25
Monday, February 7, 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 COMMERCE

Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce

Correction

In notice document 00–2198 beginning on page 4801 in the issue of Tuesday, February 1, 2000, make the following correction:

On page 4801, first column, in the third line of **ADDRESSES:** remove the space in front of *gov* in the electronic address. It should be corrected to read "*http://www.ecommerce.gov/ebarriers/respond*".

[FR Doc. C0–2198 Filed 2–4–00; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL-6524-3]

Recovered Materials Advisory Notice III

Correction

In notice document 00–1068, beginning on page 3082, in the issue ofWednesday, January 19, 2000, make the following corrections:

1. On page 3082, in the second column, under the heading **SUPPLEMENTARY INFORMATION**, in the seventh line, "V." should read "IV.".

2.On page 3089, in the first column, in the table, under the heading Postconsumer content (%), in the sixth line, above the number "67" add "16".

3. On page 3089, in the first column, in the table, under the heading Total recovered materials content (%), in the fifth line, above the number "100" add "25-30".

[FR Doc. C0–1068 Filed 2–4–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485

[HCFA-1053-CN2]

RIN 0938-AJ50

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates; Corrections

Correction

In rule document 00–126 beginning on page 1817 in the issue of Wednesday, January 12, 2000 make the following corrections:

On page 1822, in the table:

a. In the 18th entry, the "GAF" listing should read 1.1301.

b. In the 19th entry, the "Wage Index" and "GAF" listings should respectively read "1.3784"and "1.2458".

[FR Doc. C0–126 Filed 2–4–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
February 7, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Reduced Vertical Separation Minimum (RVSM); Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–1999–5925; Amdt. No. 91–261]

RIN 2120–AG82

Reduced Vertical Separation Minimum (RVSM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airspace where Reduced Vertical Separation Minimum (RVSM) may be applied to include Pacific oceanic airspace. RVSM is the reduction of the vertical separation of aircraft from 2,000 feet to 1,000 feet at flight levels (FLs) between FL 290 (29,000 feet) and FL 410 (41,000 feet). RVSM is applied only between aircraft that meet stringent altimeter and autopilot performance requirements. RVSM is currently applied only in North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) airspace. The introduction of RVSM in Pacific oceanic airspace will make more fuel and time efficient flight levels and tracks available to operators. RVSM will also enhance airspace capacity in the Pacific. In North Atlantic airspace, RVSM has been shown to maintain in acceptable level of safety since March 1997.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 600 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking actions should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

This final rule is based on Notice of Proposed Rulemaking (NPRM) No. 99–15 published in the **Federal Register** on July 8, 1999 (64 FR 37018) as amended by correction that was published in the **Federal Register** on July 28, 1999 (64 FR 40791). That proposed rule proposed to amend 14 CFR Part 91 Appendix G, Operations within Airspace Designated as Reduced Vertical Separation Minimum (RVSM) Airspace.

A final rule is published in the **Federal Register** at least 30 days before the effective date unless it is determined that good cause exists to provide an effective date that is less than 30 days after publication. This final rule will be effective less than 30 days after publication to meet the implementation date agreed to by the International Civil Aviation Organization (ICAO) Pacific RVSM Implementation Task Force. The Flight Information Regions (FIRs) and aircraft associated with specific oceanic airspace have planned to implement RVSM in the Pacific on the effective date.

Statement of the Problem

Air traffic on Pacific routes between the U.S. and Asia has increased steadily in the past few years and is projected to continue to increase. The North Pacific Track System (NOPAC) is the densest oceanic traffic area in the Pacific. Between 1994 and 1998, the annual traffic count on the NOPAC increased from 42,305 to 60,772 flights which represents an increase of 44 percent. The FAA Aviation Forecast for Fiscal Years 1998–2010 estimates that transpacific passenger traffic will continue to increase at the rate of 6.6 percent per year through 2010. Studies conducted by independent aviation industry analysts forecast the Pacific area to be the fastest growing area for flights to and from the United States.

Unless action is taken, as traffic increases, the opportunity for aircraft to fly at fuel-efficient altitudes and tracks will be significantly diminished. In addition, air traffic service providers may not be able to accommodate greater numbers of aircraft in the airspace without invoking restrictions that can result in traffic delays and fuel penalties.

RVSM alleviates the limitation on air traffic management at high altitudes imposed by the conventional 2,000-foot vertical separation standard. Increasing the number of FLs available in the Pacific region is projected to achieve operator benefits similar to those achieved in the NAT (*i.e.*, mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks). In the Pacific, the FAA plans to initially implement RVSM between FL 290 and FL 390 (inclusive). At this time, traffic density above FL 390 does not warrant implementing RVSM at FL 400 and FL 410.

History

The International Civil Aviation Organization (ICAO) Asia Pacific Air Navigation Planning and Implementation Regional Group (APANPIRG) develops and provides oversight for plans and policy related to air navigation in the Pacific and Asia. The APANPIRG established the Asia Pacific RVSM Task Force to develop and implement RVSM policy and programs in the Region. The Task Force is using the policy and criteria developed in other ICAO forums to build the RVSM program for the Pacific. The following paragraphs review the RVSM program development in U.S. and ICAO forums.

Rising traffic volume and fuel costs, which made flight at fuel-efficient altitudes a priority for operators, sparked an interest in the early 1970s in implementing RVSM above FL 290. In April 1973, the Air Transport Association of America (ATA) petitioned the FAA for a rule change to reduce the vertical separation minimum to 1.000 feet for aircraft operating above FL 290. The petition was denied in 1977 in part because (1) aircraft altimeters had not been improved sufficiently, (2) improved maintenance and operational standards had not been developed, and (3) altitude correction was not available in all aircraft. In addition, the cost of modifying nonconforming aircraft was prohibitive. The FAA concluded that granting the ATA petition at that time would have adversely affected safety. Nevertheless, the FAA recognized the potential benefits of RVSM under certain circumstances and continued to review technological developments, committing extensive resources to studying aircraft altitude-keeping performance and necessary criteria for safely reducing vertical separation above FL 290. Data showing that RVSM

implementation is technically and economically feasible has been published in studies conducted cooperatively in international forums, as well as separately by the FAA.

Because of the high standard of performance and equipment required for RVSM, the FAA advocated initial introduction of RVSM in oceanic airspace where special navigation performance standards were already required. Special navigation areas require high levels of long-range navigation precision due to the separation standard applied. RVSM implementation in such airspace requires an increased level of precision demanded of operators, aircraft, and vertical navigation systems.

On March 27, 1997, RVSM was implemented in one such special navigation area of operation established in the ICAO NAT Region, the NAT MNPS. In designated NAT MNPS airspace, tracks are spaced 60 nautical miles (NM) apart. Between FLs 310 and 390 (inclusive), aircraft are separated vertically by 1000 feet. All aircraft operating in this airspace must be appropriately equipped and capable of meeting required lateral navigation performance standards of part 91, section 91.705 and vertical navigation performance standards of part 91, section 91.706. Operators must follow procedures that ensure the navigation standards are met. Flight crews must also be trained on RVSM policy and procedures. Each operator, aircraft, and navigation system combination must receive and maintain authorization to operate in the NAT MNPS. The North Atlantic Systems Planning Group (NATSPG) Central Monitoring Agency monitors NAT aircraft fleet performance to ensure that a safe operating environment is maintained.

FAA data indicate that the altitude-keeping performance of most aircraft flying in oceanic airspace can meet the standards for RVSM operations. The FAA and ICAO research to determine the feasibility of implementing RVSM included the following four efforts:

1. FAA Vertical Studies Program. This program began in mid-1981, with the objectives of collecting and analyzing data on aircraft performance in maintaining assigned altitude, developing program requirements to reduce vertical separation, and providing technical and operational representation on the various working groups studying the issue outside the FAA.

2. RTCA Special Committee (SC)–150. RTCA, Inc., (formerly Radio Technical Commission for Aeronautics) is an industry organization in Washington, DC, that addresses aviation technical requirements and concepts and produces recommended standards. When the FAA hosted a public meeting in early 1982 on vertical separation, it was recommended that RTCA be the forum for development of minimum system performance standards for RVSM. RTCA SC–150 was formed in March 1982 to develop minimum system performance requirements, identify required improvements to aircraft equipment and changes to operational procedures, and assess the impact of the requirements on the aviation community. SC–150 served as the focal point for the study and development of RVSM criteria and programs in the United States from 1982 to 1987, including analysis of the results of the FAA Vertical Studies Program.

3. ICAO Review of the General Concept of Separation Panel (RGCSP). In 1987, the FAA concentrated its resources for the development of RVSM programs in the ICAO RGCSP. The U.S. delegation to the ICAO RGCSP used the material developed by SC–150 as the foundation for U.S. positions and plans on RVSM criteria and programs. The panel's major conclusions were:

- RVSM is technically feasible without imposing unreasonably demanding technical requirements on the equipment.
- RVSM provides significant benefits in terms of economy and en route airspace capacity.
- Implementation of RVSM on either a regional or global basis requires sound operational judgment supported by an assessment of system performance based on: aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment.

4. NATSPG and the NATSPG Vertical Separation Implementation Group (VSIG).

The NATSPG Task Force was established in 1988 to identify the requirements to be met by the future NAT Region air traffic services system; to design the framework for the NAT airspace system concept; and to prepare a general plan for the phased introduction of the elements of the concept. The objective of this effort was to permit significant increases in airspace capacity and improvements in flight economy. At the meeting of the NATSPG in June 1991, all of the NAT air traffic service provider States, as well as the International Air Transport Association (IATA) and International Federation of Airline Pilots Association (IFALPA), endorsed the Future NAT Air Traffic Services System Concept Description developed by the NATSPG Task Force. With regard to the implementation of RVSM, the Concept Description concludes that priority must be given to implementation of this measure as it is believed to be achievable within the early part of the concept time frame. The NATSPG's initial goal was to implement RVSM between 1996 and 1997. To meet this goal, the NATSPG established the VSIG in June 1991 to take the necessary actions to implement RVSM in the NAT. These actions included:

- Developing programs and documents to approve aircraft and operators for conducting flight in the RVSM environment and to address all issues related to aircraft airworthiness, maintenance, and operations. The group has produced guidance material for aircraft and operator approval that ICAO has distributed to civil aviation authorities and NAT users. Also, ICAO has planned that the guidance material be incorporated in the approval process established by the States.
- Developing the system for monitoring aircraft altitude-keeping performance. This system is used to observe aircraft performance in the vertical plane to determine that the approval process is uniformly effective and that the RVSM airspace system is safe.
- Evaluating and developing ATC procedures for RVSM, conducting simulation studies to assess the effect of RVSM on ATC, and developing documents to address ATC issues.

The ICAO Limited NAT Regional Air Navigation Meeting held in Portugal in November 1992 endorsed the NATSPG RVSM implementation program. At that meeting, it was concluded that RVSM implementation should be pursued. The FAA concurred with the conclusions of the NATSPG on RVSM implementation.

Reference Material

The FAA and other organizations developing RVSM requirements have produced a number of studies and reports. The FAA used the following documents in the development of this amendment:

- Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (FAA, July 1988).
- Initial Report on Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (RTCA SC–150, November 1984); the report provides information on the methodology for evaluating safety, factors influencing vertical separation, and strawman system performance standards.
- Minimum System Performance Standards for 1,000-Foot Vertical Separation Above Flight Level 290 (Draft 7, RTCA, August 1990); the FAA concurred with the material developed by RTCA SC–150.

• The Report of RGCSP/6 (ICAO, Montreal, 28 November–15 December 1988) published in two volumes. Volume 1 summarizes the major conclusions reached by the panel and the individual States. Volume 2 presents the complete RVSM study reports of the individual States:

• European Studies of Vertical Separation Above FL 290—Summary Report (prepared by the EUROCONTROL Vertical Studies Subgroup).

• Summary Report of United States Studies on 1,000-Foot Vertical Separation Above Flight Level 290 (prepared by the FAA Technical Center and ARINC Research Corporation).

• The Japanese Study on Vertical Separation.

• The Report of the Canadian Mode C Data Collection.

• The Results of Studies on the Reduction of Vertical Separation Intervals for USSR Aircraft at Altitudes Above 8,100 m (prepared by the USSR).

• Report of RGCSP/7 (Montreal, 30 October–20 November 1990) containing a draft Manual on Implementation of a 300 M (1,000 Ft) Vertical Separation Minimum (VSM) Between FL 290 and 410 Inclusive, approved by the ICAO Air Navigation Commission in February 1991 and published as ICAO Document 9574.

• 14 CFR Part 91 Section 91.706—Operations Within Airspace Designed As Reduced Vertical Separation Minimum Airspace

• 14 CFR Part 91 Appendix G—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace.

• Flight Standards Handbook Bulletin for Air Transportation (HBAT) and General Aviation (HBGA) "Approval of Aircraft and Operators for Flight in Airspace Above Flight Level 290 Where a 1,000 Foot Vertical Separation Minimum is Applied" (HBAT 99–11A and HBGA 99–17A).

• Interim Guidance Material 91–RVSM, "Approval of Aircraft and Operators for Flight in Airspace Above FL 290 Where a 1,000 Foot Vertical Separation is Applied", Change 1 (June 30, 1999). The interim guidance continues to provide recommended procedural steps for obtaining FAA approval.

• AC No. 91–70, "Oceanic Operations" (September 6, 1994).

• NATSPG Airspace Monitoring Sub-group Vertical Monitoring Report. (Issued quarterly)

Related Activity

Project increases in Pacific oceanic air traffic and the successful implementation of RVSM operations in the NAT support the implementation of RVSM in the Pacific. Pacific operators and Air Traffic Service (ATS) providers have requested that RVSM be pursued aggressively.

The ICAO Asia Pacific RVSM Implementation Task Force is the international body that is developing Pacific RVSM implementation plans. The Task Force is chaired by an FAA representative from the Air Traffic International Staff and supported by an ICAO representative from the Asia/Pacific Regional Office. The Task Force has three standing sub-groups: The Air Traffic Operations Group, the Aircraft Operations and Airworthiness Group and the Safety and Monitoring Group. The working groups are chaired by FAA air traffic and flight standards specialists. The Task Force includes representatives from Asia and Pacific civil aviation authorities, operators and the pilot and air traffic controller associations. The Task Force meets at approximately quarterly intervals to develop policy and procedure documents and to progress implementation tasks.

Discussion of Comments

The FAA received comments on the proposed rule from the following 6 organizations:

(1) The Air Traffic Control Association (ATCA)

(2) United Airlines (UAL)

(3) The Department of Defense (DOD)

(4) The National Business Aviation Association, Inc. (NBAA)

(5) The Hagadone Corporation

(6) The Independent Pilots Association (IPA)

Detailed Discussion of Comments and Disposition

ATCA Comments. ATCA states that it concurs with the proposed rule to implement RVSM in Pacific oceanic airspace. ATCA also states that RVSM will improve Air Traffic Management (ATM) and accommodate traffic growth in the Pacific.

UAL Comments. United Airlines (UAL) commented that it has no technical objections to this NPRM. UAL already has approval to operate four major aircraft types in RVSM airspace and anticipates no difficulties in obtaining RVSM approval for three other aircraft types prior to the February 24, 2000 implementation date. UAL supports the initial requirement for operators to monitor the altitude-keeping performance of two aircraft per fleet type, however it objects to the potential for a long term monitoring requirement.

FAA Response. Since the initial implementation of RVSM in March 1997, operator monitoring requirements have been systematically reduced as aircraft altitude-keeping performance data has been accumulated. FAA specialists are currently working with the airlines on the ICAO Asia Pacific RVSM Implementation Task Force to develop a post-implementation aircraft monitoring program that will accumulate enough data and information to show that RVSM operations remain safe. UAL is represented on that group and the FAA will continue to seek UAL's input and consider its arguments.

DOD Comments. DOD concurs, in principal, with the NPRM. It requests, however, that the FAA acknowledge and specific wording agreed to in recent meetings on the procedure for handling aircraft that are not RVSM compliant.

FAA Response. The FAA is adopting the wording on this issue that DOD cited in its comment. The FAA and the other Pacific Air Traffic Service Providers are adopting the following policy: "Aircraft that are not RVSM compliant (*e.g.,* State aircraft, ferry and maintenance flights) will only be cleared to operate between FL 290 and 390 (inclusive) after coordination with the first and notification given to subsequent oceanic centers. Notification constitutes approval."

NBAA Comments. First, the NBAA states that RVSM is currently implemented only between FLs 310–390 (inclusive) in the North Atlantic (NAT) and in portions of Canadian airspace. (Note: Canada only applies RVSM in designated transition airspace where aircraft transition between conventional and reduced vertical separation). NBAA requests that Pacific RVSM altitudes be made consistent with RVSM altitudes in the NAT and Canada. Second, NBAA states that general aviation aircraft manufacturers will not be able to publish approved RVSM Service Bulletins (SBs) for certain aircraft types by the February 24, 2000 implementation date. NBAA states that efforts must be made to accommodate such aircraft on a case by case basis for a designated period of time to allow manufacturers enough time to publish SBs.

FAA Response. (1) Consistency of RVSM Implementation. 14 CFR 91, Appendix G, Section 1 defines RVSM airspace as airspace between FL 290–FL 410 (inclusive) where 1,000-foot vertical separation is applied. Air Traffic Service Providers (ATSP) have elected to implement RVSM in phases. In October 1998, the NAT ATSP implemented RVSM between FL 310–FL 390 (inclusive). The planned initial implementation of Pacific RVSM will be FL 290–FL 390 (inclusive). The Pacific ATSP have published these FLs in NOTAMS and Aeronautical Information Publications. The FAA has provided adequate information to the operators and does not consider the applying RVSM to different FL stratum in the NAT and Pacific as a significant safety or training issue.

(2) Accommodation of Unapproved Aircraft in Pacific RVSM Airspace.

NBAA states that aircraft manufacturer engineering packages may not be available for the February 24, 2000 implementation for 1,000 business jet airframes. The FAA has the following comments:

(a) Prior Notification. The FAA believes it has given the operator community adequate time to prepare for Pacific RVSM implementation and has made extensive efforts to keep it informed on the progress of implementation plans. In January 1998, the ICAO Pacific RVSM Implementation Task Force identified February 2000 as the target date for Pacific RVSM implementation. Since that time, FAA representatives have briefed the target Pacific implementation date at user forums such as the NBAA International Operations Conference and the Pacific Oceanic Working Group. In February 1999, the FAA published an International NOTAM announcing the RVSM implementation target date of February 2000 for Oakland and Anchorage Oceanic airspace. Also, RVSM has been implemented for the past two and a half years in North Atlantic airspace. It was implemented there between FL 330–FL 370 (inclusive) in March 1997 and expanded to FL 310–FL 390 (inclusive) in October 1998. The operators and aircraft manufacturers have been well informed of the planned expansion of RVSM to other airspace.

(b) Non-group Approval Option. Operators have the option of having their aircraft approved as a non-group aircraft if an aircraft manufacturer does not develop a group approval process. Although this is a more expensive process, certain operators have used it successfully to gain RVSM approval for their aircraft. This option is available to the business aviation community.

(c) Number of Airframes Affected. NBAA states that 1,000 business jet airframes could be non-compliant on the 24 February 2000 Pacific RVSM implementation date. The FAA estimate is that 700 airframes could be affected, but this figure represents all airframes in the fleet. Not all of these airframes actually conduct operations in Pacific oceanic airspace.

(d) Percentage of Flights Affected. The majority of operators that will be prepared for RVSM implementation should not be denied the benefits of RVSM because a small percentage of operators are not yet prepared. One percent (1.0%) of flights in Pacific oceanic airspace are conducted by business aviation. Airworthiness documents (*e.g.*, Aircraft Service Changes, Service Bulletins) that detail the requirements for RVSM aircraft approval are available for the majority of aircraft types including the major business jet types. The percentage of flights conducted by aircraft for which RVSM airworthiness documents are not forecast to be available by February 2000 is 0.16 per cent. This situation will not affect 99.84 percent of flights.

(e) Accommodation of Unapproved Aircraft: Effect on Controller Workload. RVSM has been implemented as exclusionary airspace. That is, aircraft operating in RVSM designated areas at designated FLs are normally required to be RVSM approved. The flight of unapproved aircraft is only allowed on an infrequent basis, if the operator coordinates the operation with ATC prior to the flight and ATC can accommodate them in accordance with CFR Part 91, Appendix G, Section 5. By standardizing RVSM approval in a given airspace, air traffic controllers can apply one aircraft separation standard to the vast majority of aircraft operating in that airspace.

Note: Pacific ATSP have made provisions for infrequent flight of non-compliant aircraft such as State aircraft and maintenance and humanitarian flights.

If, on a *regular* basis, controllers are required to apply 1,000-foot vertical separation to certain aircraft and 2,000-foot vertical separation to others, the operation of the airspace becomes more complex and there is a negative effect on air traffic management and on controller workload. Additionally, service to RVSM-approved aircraft would be significantly diminished if unapproved aircraft were accommodated in RVSM airspace on other than rare occasions, such as those stated above. It should be noted that the application of RVSM in the North Atlantic is also exclusionary and the same provisions for limited accommodation of unapproved aircraft are applied.

(f) Concluding Comment. For the reasons cited above, the FAA has determined that in RVSM airspace it will accommodate only the infrequent flight of unapproved aircraft for maintenance, humanitarian and State aircraft flights.

The Hagadone Corporation Comments. The Hagadone Corporation states that the FAA has not approved an aircraft modification kit to enable Gulfstream II (GII) aircraft to comply with the requirements for RVSM. The Hagadone Corporation requests one of three options for RVSM implementation on the Hawaii routes. One option would be to limit the upper RVSM altitude to FL 370 on all or some of the routes from the West Coast of the U.S. to Hawaii. The second option would be to delay the implementation on these routes. The third option would be that Oakland Oceanic, with prior notice, would provide 2,000-foot separation for non-RVSM aircraft for these routes.

FAA Response. First, Hagadone states that the FAA has not approved an RVSM aircraft modification kit for the GII aircraft. The FAA has approved aircraft engineering packages for aircraft for which it has received adequate justifying data. The FAA has approved Aircraft Service Change (ASC) 499 (effective September 27, 1999) for a group of 20 GII aircraft equipped with the Honeywell SPZ–800 autopilot. Also, ASC 498 that addresses a group of 164 GII aircraft equipped with the Honeywell SP–50 autopilot is expected to be released in the 1st quarter of 2000. In addition, ASC 505 that addresses a group of 11 GIIB aircraft equipped with the Honeywell SPZ–800 autopilot and ASC 504 that addresses a group of 31 GIIB equipped with the Honeywell SP–50 autopilot is expected to be released in the 2nd quarter of 2000.

Second, Hagadone suggests three options for RVSM implementation on the Hawaii routes.

Option 1: Limit the ceiling of RVSM airspace to FL 370. This option has not been accepted. The planned ceiling is FL 390. The small percentage of flights affected (0.16%) does not warrant limiting the RVSM ceiling for the large majority of aircraft that will be compliant.

Option 2: Delay RVSM implementation on the West Coast to Hawaii routes. This option has not been accepted. The vast majority of operators and aircraft will be ready for RVSM on 24 February 2000. These operators should not be denied the benefits of RVSM because a small minority will not be ready.

Option 3: Following prior notification from the operator, Oakland Oceanic to provide conventional 2,000-foot vertical separation to non-compliant aircraft. This option has not been accepted. As noted in the response to the NBAA comments, this option affects airspace complexity and controller workload and negatively impacts service to approved users.

IPA Comments. IPA believes that Traffic Alert and Collision Avoidance System (TCAS) must be required equipment for the introduction of RVSM into Pacific oceanic airspace.

Note: RVSM has been implemented since March 1997 in North Atlantic oceanic airspace. IPA does *not* recommend that Section 91.706 and Appendix G be revised to require aircraft operating in NAT RVSM airspace to equip with TCAS.

IPA believes that the introduction of RVSM into Pacific oceanic airspace will increase the probability of accidents occurring and that TCAS will provide a safety net.

FAA Response. (1) Part 91 Aircraft Equipage Requirements for RVSM Approval. Part 91 Section 91.706 and Appendix G do not require TCAS equipage for aircraft approval for RVSM operations. 1,000-foot vertical separation has been applied up to flight level 290 since the early 1960s without special aircraft equipage or performance requirements. RVSM programs enable the use of 1,000-foot vertical separation between FL 290–410 (inclusive). Section 91.706 and Appendix G require that for an aircraft to be approved for RVSM operations, the aircraft altimetry systems, automatic altitude-keeping devices and altitude alerters must meet stringent performance requirements and also be equipped with a transponder. Aircraft equipage and performance requirements were developed in the ICAO Review of the General Concept of Separation Panel (RGCSP) and published in ICAO Document 9574 in 1992. Section 91.706 and Appendix G reflect the ICAO requirements.

(2) North Atlantic RVSM Experience. RVSM has been applied successfully since March 1997 in North Atlantic oceanic airspace. NAT airspace has the highest traffic density of any oceanic airspace in the world. Between 900 to 1100 flights are conducted each day in the RVSM airspace of the North Atlantic. By contrast, the busiest route system in the Pacific is the North Pacific Route System (NOPAC) where approximately 175 flights are conducted each day. In addition, approximately 440 flights operate per day in the entire Pacific.

(3) Applicability of IPA Comments to TCAS Rulemaking. The FAA believes that the IPA comments relate more specifically to the benefits of TCAS as a safety net in general operations and are more applicable to the rulemaking related specifically to TCAS equipage requirements. The FAA does not believe that the IPA recommendation for TCAS equipage related specifically to the expansion of 1,000-foot vertical separation above FL 290. IPA cited several incidents where TCAS could have or did contribute to the prevention of an accident. None of these incidents occurred in airspace where RVSM is applied and many of them occurred below FL 290.

(4) Current Projects Related to TCAS Equipage Requirements. There are efforts under way in the United States to revise the existing regulations related to TCAS equipage. Also, ICAO has now published Standards and Recommended Practices (SARPS) addressing TCAS equipage. The status of these efforts is as follows:

(a) Revision of Regulations Related to TCAS Equipage. In response to the IPA petition for rulemaking, the FAA is developing an NPRM. The FAA believes that the IPA comments are more applicable to this effort than to RVSM rulemaking.

(b) ICAO Annex 6 (Operation of Aircraft): Part I (International Commercial Air Transport Aeroplanes) and Part II (International General Aviation Aeroplanes). ICAO has published standards intended to expand equipage with collision avoidance systems and transponders. In November 1998, Annex 6 Part 1 was amended to state that by January 1, 2003, aircraft in excess of 15,000 kg (33,000 pounds) takeoff weight or authorized to carry more than 30 passengers shall be equipped with an airborne collision avoidance system (ACAS II) and by January 1, 2005, aircraft in excess of 5,700 kg (12,500 pounds) take off weight or authorized to carry more than 19 passengers shall be equipped with ACAS II. In addition, Annex 6 Part II paragraph 6.13 now states that by January 1, 2003, unless exempted by appropriate authorities, all aeroplanes shall be equipped with a pressure-altitude reporting transponder that operates in accordance with Annex 10, Volume IV. A note also states that this provision is intended to support the effectiveness of ACAS.

Summary of Specific IPA Issues

(1) Non-concur Due to Unacceptable Risk. IPA states that it has no objection, in principal, to the concept of reducing vertical separation if safety is not compromised. IPA, however, opposes this rule because the FAA does not mandate that all transport category aircraft operating in RVSM airspace must be equipped with an operational Traffic Alert and Collision Avoidance System (TCAS). Without a TCAS requirement, IPA believes that RVSM poses unacceptable risks to safety.

(2) Applicability of Collision Risk Modeling to Operational Safety. IPA questions the FAA statement that "all factors have been assessed" in developing the safety goals for RVSM. They question the FAA statement that the Target Level of Safety of 5 accidents in 1 billion flight hours leads to a theoretical calendar year interval between accidents in RVSM airspace of 322 years.

(3) Need for Safety Net. IPA argues that RVSM will lead to higher density traffic in airspace where it is applied and that will increase the risk of collision. IPA believes that TCAS is required to provide a safety net.

(4) Pilot Error; Mis-setting Altimeters. IPA states that mis-set altimeters in an RVSM environment will pose a threat to safety. They are particularly concerned about aircraft operating to and from Russian and Chinese airspace where metric altitudes are used and operating from Alaska and Canada where extremely low altimeter settings can be encountered.

(5) Review of TCAS Saves. IPA cites a number of incidents or accidents both below and above FL 290 where TCAS could have or did contribute to the prevention of a collision.

FAA Response to IPA Issues

(1) Unacceptable Risk Posed by RVSM Implementation Without TCAS. RVSM has been applied successfully in the NAT for 2.5 years. 1,000-foot vertical separation has been applied below FL 290 in both oceanic and continental airspace for approximately 35 years. TCAS has not been specifically required for the application of 1,000 foot-vertical separation in these environments. Instead, TCAS equipage is required by operational rules in part 121, 125, 129, and 135.

Although TCAS is not specifically required for RVSM aircraft approval, a large percent of oceanic operations are already conducted by aircraft that are TCAS equipped. Because 14 CFR parts 121, 125, 129, and 135 require TCAS equipage of airplanes with passenger seat configurations of up to 30 seats, approximately 90 percent of flights in Pacific Oceanic airspace are conducted by TCAS equipped aircraft.

The United States was the first State to require TCAS equipage. The FAA recognizes the benefits to operational safety provided by TCAS, however it does not believe that the requirement for TCAS equipage is related to the RVSM standard. TCAS equipage requirements are, therefore, published in separate regulations.

The primary threat to safety in the vertical plane both prior to and after RVSM implementation has been from human errors such as the pilot failing to level at the assigned FL. (These are referred to hereafter as operational errors). These types of errors can occur in airspace where 2,000-foot vertical separation is applied as well as those where a 1,000-foot vertical separation is applied. Recognizing the TCAS safety benefit when such errors occur, as noted previously, ICAO has already published SARPs to expand TCAS equipage and the FAA published rules requiring TCAS equipage. Also, as noted, the FAA

is developing an NPRM in response to the IPA petition for additional rulemaking related to TCAS equipage requirements.

Operational errors are also being addressed by RVSM implementation groups. Airspace monitoring organizations have been established in both the North Atlantic and the Pacific. (in the Pacific, the organization is the Asia/Pacific Approvals Registry and Monitoring Organization (APARMO). One of the stated responsibilities of the monitoring organizations is to track operational errors, analyze their effect on risk in the airspace and to administer the effort to ensure operator compliance with RVSM requirements. The APARMO will track civil aviation authority investigation of operational errors and coordinate measures to mitigate the occurrence.

The safety of RVSM is based on standardized aircraft equipage and performance and pilot and controller procedures related to altitude keeping. Monitoring of the altitude-keeping performance of RVSM approved aircraft in the NAT has shown that aircraft maintain FL better than that required for airspace system safety. The ICAO Altimetry System Error (ASE) requirements are for mean ASE not to exceed 80 feet and the mean plus 3 standard deviations of ASE not to exceed 245 feet. The mean ASE observed in the NAT aircraft population is −4 feet and the mean plus 3 standard deviations observed is 150 feet.

(2) Applicability of Collision Risk Modeling (CRM) to Operational Safety. CRM is an ICAO recognized tool that is used to analyze traffic density, aircraft altitude-keeping and human errors. It is used to establish aircraft performance requirements as well as to establish limits on the frequency of large errors. It provides a statistical probability of an accident occurring. The Target Level of Safety (TLS) established for RVSM is a theoretical 2.5 equipment related fatal accidents in a billion flight hours. The NAT Central Monitoring Agency (CMA) and the Asia/Pacific Approvals Registration and Monitoring Organization (APARMO) are tasked with collecting and investigating all errors beyond established limits in RVSM airspace. Both aircraft and human errors observed and reported are evaluated against this TLS.

Both ICAO and the FAA consider CRM to be only a tool to be used to evaluate safety and not a substitute for operational and engineering judgment. Because of this, the NAT CMA and APARMO investigate altitude-keeping errors that exceed established values individually to determine their cause and recommend measures to mitigate future errors. The FAA and the other civil aviation authorities have established operational procedures and policy to mitigate the occurrence of errors that can threaten safety.

(3) Need for a Safety Net Due to Increases in Traffic Density. As noted previously, a large percentage of U.S. aircraft are already required to be TCAS equipped by the existing regulations and ICAO has published SARPs that are intended to standardize and increase the effectiveness of TCAS operation in international airspace.

(4) Pilot Error: Mis-Setting Altimeters. Setting of altimeters to 29.92 when passing the transition altitude and re-checking for proper setting when reaching the initial cleared FL is identified as a special emphasis item for pilot training for RVSM operations. The FAA will re-emphasize the importance of properly following altimeter setting procedures for operations in all RVSM airspace. The FAA will emphasize this to FAA Flight Standards Offices as well in the ICAO Pacific RVSM Implementation Task Force that is providing guidance to the international community on RVSM policy and procedures. In regard to low altimeter settings, aircraft have operated for the past 2.5 years from Canada where low altimeter settings are encountered into NAT RVSM airspace.

(5) Review of TCAS Saves. The FAA recognizes the safety net that TCAS provides. The FAA agrees that TCAS plays a major role in limiting the probability of collision in the incidents cited in Attachment A of the IPA comments. However, none of these incidents occurred in RVSM airspace and most of them occurred below FL 290. The FAA believes this supports its position that TCAS equipage should be related to the existing operational regulations requiring TCAS and not to the regulations governing RVSM operations.

After considering the comments submitted in response to the final rule, the FAA determined that no further rulemaking is necessary.

Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this rule remain the same as under current rules and have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0026. There are no new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any differences.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 private sector, or $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule is not "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will not have a significant economic impact on a substantial number of small entities and will not constitute a barrier to international trade.

This final rule amends 14 CFR 91, Appendix G. Section 8 (Airspace Designation) by adding the appropriate Pacific oceanic Flight Information Regions (FIRs) where RVSM would be implemented. The benefits of this amendment are that, for Pacific oceanic operations, it will (1) increase the number of available flight levels, (2) enhance airspace capacity, (3) permit operators to operate more fuel/time efficient tracks and altitudes, and (4) enhance air traffic controller flexibility

by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this final rule will cost U.S. operators $21.7 million for the ten-year period 2000–2009 or $19.5 million, discounted. Estimated benefits, based on fuel savings for the commercial airplane fleet over the years 2000–2009, would be $120 million, or $83.8 million, discounted. Therefore, based on a quantitative and qualitative evaluation of this action, the proposed rule would be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulations." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

A review of the Pacific traffic data shows that no small entities operate in Pacific oceanic airspace where this rule applies. The FAA has also examined the impact of this rulemaking on small commercial operators of business jet aircraft and found that such operators are all computer or air taxi operators that do not operate in Pacific oceanic airspace. This information was obtained from the FAA database of U.S. registered aircraft and operators.

The FAA has determined that there are reasonable and adequate means to accommodate the transition to RVSM requirements, particularly for general aviation operators (many of whom are small). As of May 1999, 50% of the U.S registered GA airframes that are capable of conducting oceanic operations were approved for RVSM. Operators of such aircraft have already obtained approved in order to operate in the NAT.

The FAA conducted the required review of this final rule and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this final rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

The provisions of this rule would have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action 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, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act of 1995 Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified as 2 U.S.C. 1501, 1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental and private sector mandate that exceeds $100 million a year, therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rule qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14 Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Appendix G is amended by revising Section 8 to read as follows:

Appendix G to Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

* * * * *

Section 8. Airspace Designation

(a) RVSM in the North Atlantic.

(1) RVSM may be applied in the NAT in the following ICAO Flight Information Regions (FIRs): New York Oceanic, Gander Oceanic, Sondrestrom FIR, Reykjavik Oceanic, Shanwick Oceanic, and Santa Maria Oceanic.

(2) RVSM may be effective in the Minimum Navigation Performance Specification (MNPS) airspace within the NAT. The MNPS airspace within the NAT is defined by the volume of airspace between FL 285 and FL 420 (inclusive) extending between latitude 27 degrees north and the North Pole, bounded in the east by the eastern boundaries of control areas Santa Maria Oceanic, Shanwick Oceanic, and Reykjavik Oceanic and in the west by the western boundaries of control areas Reykjavik Oceanic, Gander Oceanic, and New York Oceanic, excluding the areas west of 60 degrees west and south of 38 degrees 30 minutes north.

(b) RVSM in the Pacific.

(1) RVSM may be applied in the Pacific in the following ICAO Flight Information Regions (FIRs): Anchorage Arctic, Anchorage Continental, Anchorage Oceanic, Auckland Oceanic, Brisbane, Edmonton, Honiara, Los Angeles, Melbourne, Nadi, Naha, Nauru, New Zealand, Oakland, Oakland Oceanic, Port Moresby, Seattle, Tahiti, Tokyo, Ujung Pandang and Vancouver.

Issued in Washington, DC, on February 1, 2000.

Jane F. Garvey,

Administrator.

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Federal Register

Monday,
February 7, 2000

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Coastal California Gnatcatcher; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF32

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Coastal California Gnatcatcher

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the coastal California gnatcatcher pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat unit boundaries encompasses approximately 323,726 hectares (799,916 acres) of gnatcatcher habitat in Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California. The actual area containing gnatcatcher habitat is smaller.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the gnatcatcher are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Areas that do not currently contain all of the primary constituent elements, but that could develop them in the future, may be essential to the conservation of the species and may be designated as critical habitat.

Proposed critical habitat does not include lands covered by an existing, legally operative, incidental take permit for the coastal California gnatcatcher under section 10(a)(1)(B) of the Act. The Habitat Conservation Plans (HCPs) provide for special management and protection under the terms of the permit and the lands covered by them are therefore not proposed for inclusion in the critical habitat.

In areas where HCPs have not yet had permits issued, we have proposed critical habitat for lands encompassing core populations of gnatcatchers and areas essential for habitat connectivity which may require special management considerations or protections.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation and our approaches for handling HCPs. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: *Comments:* We will consider comments received by April 7, 2000.

Public Hearings: The dates of three public hearings scheduled for this proposal are:

1. Los Angeles and Orange Counties—February 15, 2000.
2. San Diego County—February 17, 2000.
3. Riverside and San Bernardino Counties—February 23, 2000.

All public hearings will be held from 1:00 p.m. to 3:00 p.m. and 6:00 p.m. to 8:00 p.m.

ADDRESSES: *Comments:* If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may send comments by electronic mail (e-mail) to fw1cagn@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

Public Hearings: Three public hearings are scheduled. Public hearing locations are:

1. Los Angeles and Orange Counties—Sheraton Anaheim Hotel, 1015 West Ball Road, Anaheim, California.
2. San Diego County—San Diego Hilton Mission Valley, 901 Camino del Rio South, San Diego, California.
3. Riverside and Bernardino Counties—Holiday Inn Select Riverside, 3400 Market Street, Riverside, California.

Availability of Documents: Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; facsimile 760/431–9624). For information about western Los Angeles County, contact the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road Suite B, Ventura, California 93003 (telephone: 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The insectivorous coastal California gnatcatcher (*Polioptila californica californica*) is a small (length 11 centimeters (4.5 inches), weight 6 grams (0.2 ounces)), long-tailed member of the old-world warbler and gnatcatcher family Sylviidae (American Ornithologist Union 1998). The bird's plumage is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap which is absent during the winter. Both sexes have a distinctive white eye-ring.

The coastal California gnatcatcher is one of three subspecies of the California gnatcatcher (*Polioptila californica*). This taxon is restricted to coastal southern California and northwestern Baja California, Mexico, from Ventura and San Bernardino Counties, California, south to approximately El Rosario, Mexico, at about 30° north latitude (American Ornithologists' Union 1957, Atwood 1991, Banks and Gardner 1992, Garrett and Dunn 1981). An evaluation of the historic range of the coastal California gnatcatcher indicates that about 41 percent of its latitudinal distribution is within the United States and 59 percent within Baja California, Mexico (Atwood 1990). A more detailed analysis, based on elevational limits associated with gnatcatcher locality records, reveals that a significant portion (65 to 70 percent) of the coastal California gnatcatcher's historic range may have been located in southern California rather than Baja California (Atwood 1992). The analysis suggested that the species occurs below about 912 meters (m) (3,000 feet (ft)) in elevation. Of the approximately 8,700 historic or current locations used in the analysis for this proposed rule, more than 99 percent were below 770 m (2,500 ft).

The coastal California gnatcatcher was considered locally common in the mid-1940s although a decline in the extent of its habitat was noted (Grinnell and Miller 1944). By the 1960s, this species had apparently experienced a significant population decline in the United States that has been attributed to widespread destruction of its habitat.

Pyle and Small (1961) reported that "the California subspecies is very rare, and lack of recent records of this race compared with older records may indicate a drastic reduction in population." Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remained in the United States. He also noted that remnant portions of its habitat were highly fragmented with nearly all being bordered on at least one side by rapidly expanding urban centers. Subsequent reviews of coastal California gnatcatcher status by Garrett and Dunn (1981) and Unitt (1984) paralleled the findings of Atwood (1980). The species was listed as threatened in March 1993, due to habitat loss and fragmentation resulting from urban and agricultural development, and the synergistic effects of cowbird parasitism and predation (58 FR 16742).

The coastal California gnatcatcher typically occurs in or near sage scrub habitat, which is a broad category of vegetation that includes the following plant communities as classified by Holland (1986): Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan (areas created when sediments from the stream are deposited) scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub. Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995).

The majority of plant species found in sage scrub habitat are low-growing, drought-deciduous shrubs and sub-shrubs. Generally speaking, most types of sage scrub are dominated by one or more of the following— California sagebrush (*Artemisia californica*), buckwheats (*Eriogonum fasciculatum* and *E. cinereum*), encelias (*Encelia californica* and *E. farinosa*), and various sages (commonly *Salvia mellifera, S. apiana,* and *S. leucophylla*). Sage scrub often occurs in a patchy, or mosaic, distribution pattern throughout the range of the gnatcatcher.

Gnatcatchers also use chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and riparian (areas near a source of water) habitats where they occur in proximity to sage scrub. These non-sage scrub habitats are used for dispersal and foraging (Atwood *et al.* 1998; Campbell *et al.* 1998). Availability of these non-sage scrub areas may be essential during certain times of the year, particularly during drought conditions, for dispersal, foraging, or nesting.

A comprehensive overview of the life history and ecology of the coastal California gnatcatcher is provided by Atwood (1990) and is the basis for much of the discussion presented below. The coastal California gnatcatcher is non-migratory and defends breeding territories ranging in size from 1 to 6 hectares (ha) (2 to 14 acres (ac)). Reported home ranges vary in size from 5 to 15 ha (13 to 39 ac) for this species (Mock and Jones 1990). The breeding season of the coastal California gnatcatcher extends from late February through July with the peak of nest initiations (startups) occurring from mid-March through mid-May. Nests are composed of grasses, bark strips, small leaves, spider webs, down, and other materials and are often located in California sagebrush about 1 m (3 ft) above the ground. Nests are constructed over a 4- to 10-day period. Clutch size averages four eggs. The incubation and nestling periods encompass about 14 and 16 days, respectively. Both sexes participate in all phases of the nesting cycle. Although the coastal California gnatcatcher may occasionally produce two broods in one nesting season, the frequency of this behavior is not known. Juveniles are dependent upon, or remain closely associated with, their parents for up to several months following departure from the nest and dispersal from their natal (place of birth) territory.

Dispersal of juveniles generally requires a corridor of native vegetation providing certain foraging and shelter requisites to link larger patches of appropriate sage scrub vegetation (Soulé 1991). These dispersal corridors facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soulé 1991 and Galvin 1998). It has been suggested that "natal dispersal [through corridors] is therefore an important aspect of the biology of [a] * * * nonmigratory, territorial bird * * * [such as] the California gnatcatcher * * *" Galvin (1998). Although it has also been suggested that juvenile coastal California gnatcatchers are capable of dispersing long distances (up to 22 kilometers (14 miles)) across fragmented and highly disturbed sage scrub habitat, such as found along highway and utility corridors or remnant mosaics of habitat adjacent to developed lands, generally the species disperses short distances through contiguous, undisturbed habitat (Bailey and Mock 1998, Famolaro and Newman 1998, and Galvin 1998). Moreover, it is likely that populations will experience increased juvenile mortality in fragmented habitats where dispersal distances are greater than average (Atwood *et al.* 1998). This would be particularly true if dispersal was across non-or sub-optimal habitats that function as population sinks (areas where mortality is greater than reproduction rates) (Soulé 1991).

Previous Federal Action

On March 30, 1993, we published a final rule determining the gnatcatcher to be a threatened species (58 FR 16741). In making this determination, we relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory. As is standard practice in the scientific community, we cited the conclusions by Dr. Atwood in a peer reviewed, published scientific article pertaining to the subspecific taxonomy of the gnatcatcher (Atwood 1991).

On December 10, 1993, we published a final special rule concerning the take of the gnatcatcher pursuant to section 4(d) of the Act (58 FR 63088). This rule defines the conditions for which incidental take of the gnatcatcher resulting from certain land-use practices regulated by State and local governments through the Natural Community Conservation Planning Act of 1991 (NCCP) would not be a violation of section 9 of the Act. We found that implementation of the special 4(d) rule and the NCCP program provides for conservation and management of the gnatcatcher and its habitat in a manner consistent with the purposes of the Act.

The Endangered Species Committee of the Building Industry Association of Southern California and other plaintiffs filed a suit challenging the listing on several grounds, but primarily based on our conclusions regarding gnatcatcher taxonomy. In a Memorandum Opinion and Order filed in the U. S. District Court for the District of Columbia (District Court) on May 2, 1994, the District Court vacated the listing determination, holding that the Secretary of the Interior (Secretary) should have made available the underlying data that formed the basis of Dr. Atwood's conclusions on the taxonomy of the gnatcatcher.

Following the District Court's decision, Dr. Atwood released his data to the Service. We made these data available to the public for review and comment on June 2, 1994 (59 FR 28508). By order dated June 16, 1994, the District Court reinstated the threatened

status of the gnatcatcher pending a determination by the Secretary whether the listing should be revised or revoked in light of the public review and comment of Dr. Atwood's data. On March 27, 1995, we published a determination to retain the threatened status for the gnatcatcher (60 FR 15693).

At the time of the listing, we concluded that designation of critical habitat for the gnatcatcher was not prudent because such designation would not benefit the species and would make the species more vulnerable to activities prohibited under section 9 of the Act. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process. In addition, most land occupied by the gnatcatcher was in private ownership, and we did not believe a designation of critical habitat to be of benefit because of a lack of a Federal nexus (critical habitat has regulatory applicability only for activities carried out, funded, or authorized by a Federal agency).

On May 21, 1997, the U.S. Court of Appeals for the Ninth Circuit issued an opinion (Natural Resources Defense Council v. U.S. Department of the Interior, 113 F. 3d 1121) that required us to issue a new decision regarding the prudency of determining critical habitat for the gnatcatcher. In this opinion, the Court held that the "increased threat" criterion in the regulations may justify a not prudent finding only when we have weighed the benefits of designation against the risks of designation. Secondly, with respect to the "not beneficial" criterion explicit in the regulations, the Court ruled that our conclusion that designation of critical habitat was not prudent because it would fail to control the majority of land-use activities within critical habitat was inconsistent with Congressional intent that the not prudent exception to designation should apply "only in rare circumstances." The Court noted that a substantial portion of gnatcatcher habitat would be subject to a future Federal nexus sufficient to trigger section 7 consultation requirements regarding critical habitat. Thirdly, the Circuit Court determined that our conclusion that designation of critical habitat would be less beneficial to the species than another type of protection (e.g., State of California Natural Communities Conservation Program (NCCP) efforts) did not absolve us from the requirement to designate critical habitat. The Court also criticized the lack of specificity in our analysis.

On February 8, 1999, we published a notice of determination in the **Federal Register** (64 FR 5957) regarding the prudency of designating critical habitat for the gnatcatcher. We found that the designation of critical habitat was prudent on Federal lands within the range of the gnatcatcher and nonFederal lands where a current or likely future Federal nexus exists. We determined that designating critical habitat on private lands lacking a current or likely future Federal nexus or any lands subject to the provision of an approved HCP under section 10(a)(1)(B) of the Act and/or an approved NCCP under which the gnatcatcher is a covered species would provide no additional benefit to the species. Further, we determined that the threats (e.g., activities prohibited under section 9 of the Act) from designating critical habitat on private lands would outweigh the benefits in certain areas.

On August 4, 1999, in response to a motion filed by the Natural Resources Defense Council, the U.S. District Court for the Central District of California ordered the Service to propose critical habitat by October 4, 1999. In response to this order and in preparation of a proposal using our prudency determination (64 FR 5957), we had difficulty delineating critical habitat because of the uncertainty regarding likely future Federal nexuses. Since publication of the determination, we discovered that the Federal nexuses relied on in our prudency determination for several development projects no longer existed. Conversely, other projects were found to have current Federal nexuses, which were lacking when we developed the prudency determination. Given the unpredictability of determining whether a Federal nexus is likely to exist on any given parcel of private land, we have reevaluated our previous conclusion and now conclude that there may be a regulatory benefit from designating critical habitat for the gnatcatcher on private lands now lacking an identifiable Federal nexus because such lands may have a nexus to a Federal agency action in the future.

In our prudency determination (64 FR 5957), we described the threat posed by vandalism towards the gnatcatcher and its habitat, largely coastal sage scrub. We cited several cases under investigation by our Law Enforcement Division and various newspaper articles regarding this threat. We determined that the designation of critical habitat would increase the instances of habitat destruction and exacerbate threats to the gnatcatcher. Therefore, we concluded that the threat posed by vandalism that would result from designating private lands lacking a Federal nexus as critical habitat would outweigh the benefit that would be provided. We acknowledged that critical habitat may provide some benefit by highlighting areas where the species may occur or areas that are important to recovery. However, we stated that such locational data are well known, and designation of critical habitat on private lands may incite some members of the public and increase incidences of habitat vandalism above current levels.

We have reconsidered our evaluation in the prudency determination of the threats posed by vandalism. We have determined that the threats to the gnatcatcher and its habitat from the specific instances of habitat destruction we identified do not outweigh the broader educational, and any potential regulatory and other possible benefits, that a designation of critical habitat would provide for this species. The instances of likely vandalism, though real, were relatively isolated given the wide-ranging habitat of the gnatcatcher. Additionally, having determined that the existence of current or likely future Federal nexuses is an unreliable basis upon which to include or exclude private lands as critical habitat, we are not compelled to identify specific scattered parcels of private land with presumptive Federal nexuses. Instead, we are able to use a landscape approach in identifying areas for critical habitat designation that does not appear to highlight individual parcels of private land. Consequently, we conclude that designating critical habitat on private lands will not increase incidences of habitat vandalism above current levels for this species. In contrast, a designation of critical habitat will provide some educational benefit by formally identifying on a range-wide basis those areas essential to the conservation of the species and, thus, the areas likely to be the focus of our recovery efforts for the gnatcatcher. Therefore, we conclude that the benefits of designating critical habitat on nonFederal lands essential for the conservation of the gnatcatcher outweigh the risks of increased vandalism resulting from such designation.

The Service considered the existing status of lands in designating areas as critical habitat. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. Incidental take permit applications must be supported by a HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. NonFederal lands that are covered by an

existing operative permit issued for California gnatcatcher under section 10(a)(1)(B) of the Act receive special management and protection under the terms of the permit and are therefore not being proposed for inclusion in critical habitat.

We expect that critical habitat may be used as a tool to help identify areas within the range of the California gnatcatcher most critical for the conservation of the species, and we will encourage development of HCPs for such areas on nonFederal lands. We consider HCPs to be one of the most important methods through which nonFederal landowners can resolve endangered species conflicts. We provide technical assistance and work closely with applicants throughout development of HCPs to help identify special management considerations for the California gnatcatcher. HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species. Therefore, we have not included any lands covered by an existing legally-operative incidental take permit for California gnatcatcher in this proposed critical habitat designation.

In light of our decision to reconsider the prudency determination, we needed additional time to revise the determination (64 FR 5957) and develop a proposed critical habitat rule based on the revised determination. We therefore requested an extension of 120 days in which to reevaluate prudency and propose critical habitat, which the District Court granted. The Court also ordered us to publish a final critical habitat rule by September 30, 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 a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain all of the primary constituent elements, but that could develop them in the future, may be essential to the conservation of the species and may be designated as critical habitat.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other nonFederal lands that do not involve a Federal nexus, critical habitat designation would not afford any protection under the Act against such activities.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish a preserve area where no actions are allowed, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation and section 10 HCPs.

Section 3(5)(C) of the Act generally requires that not all areas that can be occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the conservation of the species. Areas that contain one or more of the primary constituent elements that may support gnatcatchers, but are not included within critical habitat boundaries, would be considered under other parts of the Act and/or other conservation laws and regulations.

Methods

In determining areas that are essential to conserve the gnatcatcher, we used the best scientific and commercial data available. This included data from research and survey observations published in peer reviewed articles; regional Geographic Information System (GIS) coverages; habitat evaluation models for the San Diego County Multiple Species Conservation Plan (MSCP), the North San Diego County Multiple Habitat Conservation Plans (MHCP), and the North County Subarea of the MSCP for Unincorporated San Diego County; approved HCPs; and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. Following the listing of the species, a concerted effort was undertaken to survey significant portions of the species' range in San Diego and Orange Counties for the purpose of developing and implementing HCPs, and more recently, surveys of varying intensity have been conducted in Los Angeles, Riverside, San Bernardino, and Ventura Counties.

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 base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to—space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The areas we are proposing to designate as critical habitat provide some or all of those habitat components essential for the primary biological needs of the gnatcatcher also called primary constituent elements.

The primary constituent elements for the gnatcatcher are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in undeveloped areas, including agricultural lands, that support or have the potential to support, through natural successional processes, various types of sage scrub or chaparral, grassland, and riparian habitats where they occur proximally to sage scrub and where they may be utilized for biological needs such as breeding and foraging (Atwood *et al.* 1998, Campbell *et al.* 1998). Primary constituent elements associated with the biological

needs of dispersal are also found in undeveloped areas, including agricultural lands, that provide or could provide connectivity or linkage between or within larger core areas, including open space and disturbed areas containing introduced plant species that may receive only periodic use.

Primary constituent elements include, but are not limited to, the following plant communities—Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995). Dominant plants within these communities include California sagebrush, buckwheats, encelias, and various sages (commonly *Salvia mellifera*, *S. apiana*, and *S. leucophylla*). Other commonly occurring plants include coast goldenbush (*Isocoma menziesii*), bush monkeyflower (*Mimulus aurantiacus*), Mexican elderberry (*Sambucus mexicana*), bladderpod (*Isomeris arborea*), deerweed (*Lotus scoparius*), chaparral mallow (*Malacothamnus fasciculatum*), laurel sumac (*Malosma laurina*), and several species of *Rhus* (*R. integrifolia*, *R. ovata*, and *R. trilobata*). Succulent species, such as boxthorn (*Lycium* spp.), cliff spurge (*Euphorbia misera*), jojoba (*Simmondsia chinensis*), and various species of cacti (*Opuntia littoralis*, *O. prolifera*, and *Ferocactus viridescens*), and live-forever (*Dudleya* spp.), are represented in maritime succulent scrub, coast prickly-pear scrub, and southern coastal bluff scrubs.

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection and proposal of specific areas or units for gnatcatcher critical habitat. Such criteria focused on designating units—(1) Throughout the geographical and elevational range of the species; (2) within various occupied plant communities, such as Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub; (3) in documented areas of large, contiguous blocks of occupied habitat (i.e., core population areas); and/or in areas that link core populations areas (i.e., linkage areas). These criteria are similar to criteria used to identify reserve/preserve lands in approved HCPs covering the gnatcatcher.

To identify proposed critical habitat units, we first examined those lands identified for conservation under approved HCPs covering the gnatcatcher. These planning efforts utilized habitat evaluation models, gnatcatcher occurrence data, and reserve design criteria to identify reserve systems of core gnatcatcher populations and linkage areas that are essential for the conservation of the species.

We then evaluated those areas where on-going habitat conservation planning efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the gnatcatcher. These include—the Western Riverside County MSHCP, the Rancho Palos Verdes MSHCP, the North San Diego County MHCP, the North County Subarea of the MSCP for Unincorporated San Diego County, and the Southern Subregion of Orange County's NCCP. We used those biological analyses in concert with data regarding current gnatcatcher occurrences—(1) sage scrub vegetation, (2) elevation, and (3) connectivity to identify those lands that are essential for the conservation of the gnatcatcher within the respective planning area boundaries.

Finally, we evaluated other lands for their conservation value for the gnatcatcher. We delimited a study area by selecting geographic boundaries based on the following—(1) gnatcatcher occurrences, (2) sage scrub vegetation, (3) elevation, and (4) connectivity to other gnatcatcher occurrences. We determined conservation value based on the presence of, or proximity to, significant gnatcatcher core populations and/or sage scrub, sage scrub habitat quality, parcel or habitat patch size, surrounding land-uses, and potential to support resident gnatcatchers and/or facilitate movement of birds between known habitat areas.

Proposed Critical Habitat Units are defined by specific map units that have been delineated using public land survey (PLS) sections (generally one square mile) or Universal Transverse Mercator (UTM) coordinates in Spanish Land Grant areas (areas which have not been surveyed for inclusion into PLS). On Marine Corps Base Camp Pendleton we used training area boundaries and UTM coordinates. Within the Orange County NCCP Central/Coastal Subregions we used boundaries of select Existing Land Use and North Ranch Policy Plan areas.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for gnatcatcher conservation. Within the delineated critical habitat unit boundaries, only lands where one or more constituent elements are found are proposed for critical habitat. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, railroads, and other features, do not contain one or more of the primary constituent elements. Therefore, these areas are not proposed for critical habitat.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes gnatcatcher habitat throughout the species' range in the United States (i.e., Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California). Lands proposed are under private, State, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management (BLM), Department of Defense (DOD), Service, and Forest Service. Lands proposed as critical habitat have been divided into 15 Critical Habitat Units. A brief description of each unit and reasons for proposing it as critical habitat are presented below.

Table 1. Approximate proposed critical habitat area (hectares (acres)) by county and land ownership. Estimates reflect the total area within critical habitat unit boundaries, without regard to the presence of primary constituent elements. The area actually proposed as critical habitat is therefore less than that indicated in Table 1.

County	Federal*	Local/state	Private	Total
Los Angeles	4,407 ha (10,890 ac)	1,066 ha (2,633 ac)	28,795 ha (71,151 ac)	34,268 ha (84,675 ac)

County	Federal*	Local/state	Private	Total
Orange	1,428 ha (3,529 ac)	3,736 ha (9,232 ac)	34,128 ha (84,463 ac)	39,346 ha (97,224 ac)
Riverside	7,378 ha (18,230 ac)	7,430 ha (18,360 ac)	90,726 ha (224,181 ac)	105,534 ha (260,771 ac)
San Bernardino	2,952 ha (7,295 ac)	352 ha (870 ac)	29,666 ha (73,304 ac)	32,971 ha (81,470 ac)
San Diego	35,767 ha (88,378 ac)	2,597 ha (6,418 ac)	73,243 ha (180,981 ac)	111,607 ha (275,777 ac)
Total	51,932 ha (128,322 ac)	15,181 ha (37,513 ac)	256,558 ha (634,080 ac)	323,726 ha (799,916 ac)

*Federal lands include Bureau of Land Management, Department of Defense, National Forest, and Fish and Wildlife Service lands.

Unit 1: San Diego Multiple Species Conservation Program (MSCP)

Unit 1 encompasses approximately 20,697 ha (51,141 ac) within the MSCP planning area. Lands proposed contain core gnatcatcher populations, sage scrub and areas providing connectivity between core populations and sage scrub. Proposed critical habitat includes lands within the MSCP planning areas that have not received incidental take permits for the gnatcatcher under section 10(a)(1)(B) of the Act. This includes lands essential to the conservation of the gnatcatcher within: the cities of Chula Vista, El Cajon, and Santee; major amendment areas within the San Diego County Subarea Plan; the Otay-Sweetwater Unit of the San Diego National Wildlife Refuge Complex; and water district lands owned by Sweetwater Authority, Helix Water District and Otay Water District.

Unit 2: Marine Corps Air Station, Miramar

Unit 2 encompasses approximately 4,859 ha (12,007 ac) on Marine Corps Air Station, Miramar (Station). Lands proposed include areas identified as occupied by core gnatcatcher populations in the Station's proposed Integrated Natural Resource Management Plan as well as canyons and corridors that provide east-west and north-south linkages to defined preserve lands adjacent to this unit.

Unit 3: Multiple Habitat Conservation Open Space Program (MHCOSP) for San Diego County

Unit 3 encompasses approximately 6,014 ha (14,860 ac) within the MHCOSP. Lands proposed include a core population of gnatcatchers on the Cleveland National Forest south of State Route 78 near the upper reaches of the San Diego River. It also includes important corridors of sage scrub for connectivity.

Unit 4: North San Diego County Multiple Habitat Conservation Plan (MHCP)

Unit 4 encompasses approximately 28,542 ha (70,526 ac) within the MHCP planning area in northwestern San Diego County. Lands proposed contain core gnatcatcher populations and sage scrub identified by the San Diego Association of Governments' (SANDAG) "Gnatcatcher Habitat Evaluation Model," dated March 24, 1999, as high or moderate value. In addition, areas proposed provide connectivity between habitat valued as high or moderate. This unit also provides connectivity between core gnatcatcher populations within adjacent units.

Unit 5: Marine Corps Base Camp Pendleton

Unit 5 encompasses approximately 20,613 ha (50,935 ac) on Marine Corps Base Camp Pendleton (Base). Areas proposed include 26 training areas and portions of an additional 9 training areas (refer to the legal description for this unit for the names of the training areas affected). The Base contains a substantial coastal corridor of gnatcatcher-occupied sage scrub that provides the primary linkage between San Diego populations and those in southern Orange County (Unit 8). Another corridor of gnatcatcher-occupied sage scrub occurs along the Santa Margarita River valley that branches inland, connecting with habitat in the Fallbrook Naval Weapons Station (Unit 6) and further north into southwestern Riverside County (Unit 12).

Unit 6: Fallbrook Naval Weapons Station

Unit 6 encompasses approximately 3,606 ha (8,909 ac) on Fallbrook Naval Weapons Station in northern San Diego County. The unit provides a significant segment of a corridor of sage scrub between core gnatcatcher populations on Camp Pendleton (Unit 5) and populations in southwestern Riverside County (Unit 12).

Unit 7: North County Subarea of the MSCP for Unincorporated San Diego County

Unit 7 encompasses approximately 27,295 ha (67,446 ac) within the planning area for the North County Subarea of the MSCP for San Diego County. Lands proposed contain several core gnatcatcher populations and sage scrub identified as high or moderate value. In addition, proposed areas provide connectivity between habitat valued as high or moderate. This unit constitutes the primary inland linkage between San Diego populations and those in southwestern Riverside County (Unit 12).

Unit 8: Southern NCCP Subregion of Orange County

Unit 8 encompasses approximately 27,828 ha (68,763 ac) within the planning area for the Southern NCCP Subregion of Orange County. This unit contains significant core populations and provides the primary linkage for core populations on Marine Corps Base Camp Pendleton (Unit 5) to those further north in Orange County (Unit 9).

Unit 9: Central/Coastal NCCP Subregions of Orange County (Central/Coastal NCCP)

Unit 9 encompasses approximately 2,337 ha (5,776 ac) within the Orange County Central/Coastal NCCP planning area. It includes lands containing core gnatcatcher populations and sage scrub habitat determined to be essential for the conservation and recovery of the gnatcatcher within select Existing-Use Areas, the western portion of the North Ranch Policy Plan Area (i.e., west of State Route 241), and the designated reserve (panhandle portion) of Marine Corps Air Station El Toro.

Unit 10: Palos Verdes Peninsula Subregion, Los Angeles County

Unit 10 encompasses approximately 5,588 ha (13,808 ac) within the

subregional planning area for the Palos Verdes Peninsula in Los Angeles County, including the City of Rancho Palos Verdes MSHCP area. This unit includes a core gnatcatcher population and sage scrub habitat.

Unit 11: East Los Angeles County-Matrix NCCP Subregion of Orange County

Unit 11 encompasses approximately 22,130 ha (54,682 ac) within the Montebello, Chino-Puente Hills, East Coyote Hills and West Coyote Hills area. The unit provides the primary connectivity between core gnatcatcher populations and sage scrub habitat within the Central/Coastal Subregions of the Orange County NCCP (Unit 9), the Western Riverside County MSHCP (Unit 12), and the Bonelli Regional Park core population within the North Los Angeles linkage (Unit 14).

Unit 12: Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

Unit 12 encompasses approximately 106,908 ha (264,167 ac) within the proposed planning area for the Western Riverside County MSHCP. Lands proposed include core populations within the Temecula/Murietta/Lake Skinner region and the Lake Elsinore/Lake Mathews region. Also proposed are regions of connectivity and additional core populations that occur along the I–15 corridor, the Lake Perris area, the Alessandro Heights area, the Box Spring Mountains/The Badlands, and along the foothills of the Santa Ana Mountains into the Chino-Puente Hills. These areas provide connectivity between core populations within Riverside County and to populations in San Diego, San Bernardino, Orange, and Los Angeles Counties. Unit 12 encompasses some of the Core Reserves established under the Stephens' Kangaroo Rat HCP. The Lake Mathews/Estelle Mountain, Steele Peak, Lake Perris/San Jacinto Core Reserves, the Potrero Area of Critical Environmental Concern, and the Southwestern Riverside County Multi-Species Reserve provide essential habitat for the gnatcatcher and, therefore, have been proposed for designation as critical habitat.

Unit 13: San Bernardino Valley MSHCP, San Bernardino County

Unit 13 encompasses approximately 30,076 ha (74,316 ac) along the foothills of the San Gabriel Mountains and within the Jurupa Hills on the border of San Bernardino and Riverside Counties. The unit includes lands within the San Bernardino National Forest and on Norton Air Force Base. This unit contains breeding gnatcatcher populations and constitutes a primary linkage between western Riverside County (Unit 12) and eastern Los Angeles County (Unit 11).

Unit 14: East Los Angeles County Linkage

Unit 14 encompasses approximately 3,384 ha (8,361 ac) in eastern Los Angeles County along the foothills of the San Gabriel Mountains. Its main function is in establishing the primary east-west connectivity of sage scrub habitat between core gnatcatcher populations in San Bernardino County (Unit 13) to those in southeastern Los Angeles County (Unit 11).

Unit 15: Western Los Angeles County

Unit 15 encompasses approximately 13,897 ha (34,339 ac) in western Los Angeles county along the foothills of the San Gabriel Mountains. It includes breeding gnatcatcher populations and sage scrub habitat in the Placerita, Box Springs Canyon, and Plum Canyon areas. This unit encompasses the northern distributional extreme of the gnatcatcher's current range.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) 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 nonFederal 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, including the Service, 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. 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. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

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.

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 the biological opinion when the critical habitat is

designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the coastal California gnatcatcher or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U. S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on nonFederal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the gnatcatcher is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly adversely affect critical habitat include, but are not limited to—

(1) Removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, invasion of exotic plants or animals, or fragmentation).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit to critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to—

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the BLM or Forest Service;

(4) Road construction and maintenance, right of way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(6) Military training and maneuvers on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands;

(7) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U. S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

All proposed critical habitat is within the geographical area occupied by the species and is likely used by gnatcatchers, whether by reproductive, territorial birds, or by birds merely moving through the area. Thus, in a broad sense, we consider all critical habitat to be occupied by the species. Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species, thus we do not anticipate additional regulatory protection will result from critical habitat designation.

Relationship to Incidental Take Permits Issued Under Section 10

Several habitat conservation planning efforts have been completed within the range of the gnatcatcher. Principal among these are NCCP efforts in Orange and San Diego Counties. NCCP plans completed and permitted to date have resulted in the conservation of 40,208 ha (99,310 ac) of gnatcatcher habitat.

In southwestern San Diego County, the development of the MSCP has resulted in our approval of three subarea plans under section 10(a)(1)(B) of the Act. These three southern subarea plans account for approximately 95 percent of the gnatcatcher habitat in southern San Diego County. When fully implemented, the MSCP will result in the establishment of conservation areas that collectively contain 28,844 ha (71,274 ac) of coastal sage scrub vegetation within a 69,573-ha (171,917-ac) preserve area.

Additionally, we have approved the Orange County Central-Coastal NCCP/HCP and issued an incidental take permit under section 10(a)(1)(B) of the Act. Implementation of the plan will result in the conservation of 15,677 ha (38,738 ac) of Reserve lands, which contain 7,621 ha (18,831 ac) of coastal sage scrub.

The gnatcatcher habitat in the approved planning areas in San Diego and Orange Counties was selected, with our technical assistance and that of the California Department of Fish and Game (CDFG), for permanent preservation and configuration into a biologically viable interlocking system of reserves by the local jurisdictions. The reserve system established within the approved planning areas includes those habitat areas that we consider essential to the long-term survival and recovery of the gnatcatcher. In addition, the plans detail management measures for the reserve lands that protect, restore, and enhance their value as gnatcatcher habitat.

The essential gnatcatcher habitat that is within planning areas is permanently

protected in the habitat reserves; no additional private lands within the planning areas warrant designation as critical habitat. Because the gnatcatcher habitat preserved in the planning areas is managed for the benefit of the gnatcatcher under the terms of the plans, and associated section 10 (a)(1)(B) permits there are no "additional management considerations or protections" required for those lands. Therefore, we have determined that private lands within approved HCP planning areas and covered by an existing section 10(a)(1)(B) permit for the gnatcatcher do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

We also have approved several smaller multiple species HCPs in San Diego Riverside, Los Angeles, and Orange Counties. These include, Bennett Property, Meadowlark Estates, Fieldstone, and Poway Subarea Plan in San Diego County; Coyote Hills East and Shell Oil in Orange County; Ocean Trails in Los Angeles County; and Lake Mathews in Riverside County. These efforts have resulted in the protection of 3,743 ha (9,250 ac) of gnatcatcher habitat.

The currently approved and permitted HCPs are designed to ensure the long-term survival of covered species, including the gnatcatcher, within the plan areas. The reserve lands and other conservation lands that require protection under these approved plans encompass those lands essential for the survival and recovery of the gnatcatcher. The HCPs and implementation agreements outline management measures and protections for the conservation lands that are crafted to protect, restore, and enhance their value as gnatcatcher habitat. Because appropriate management and protection of areas essential for the conservation of the gnatcatcher are required under these approved and permitted plans, we do not believe these areas meet the definition of critical habitat nor do we believe they require designation.

As is the case with existing approved gnatcatcher HCPs, the gnatcatcher plans currently under development will provide for protection and management of habitat areas essential for the conservation of the gnatcatcher while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by gnatcatchers. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the gnatcatcher. Several HCP efforts are now underway for the gnatcatcher and other listed and non-listed species, in Orange, Los Angeles, Riverside, San Bernardino, and San Diego Counties in areas proposed herein as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the gnatcatcher should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

Relationship to the 4(d) Special Rule for the Gnatcatcher

On December 10, 1993, a final special rule concerning take of the gnatcatcher was published pursuant to section 4(d) of the Act (58 FR 63088). Under the 4(d) special rule, incidental take of gnatcatchers is not considered to be a violation of section 9 of the Act if—(1) Take results from activities conducted pursuant to the requirements of the NCCP and in accordance with an approved NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State of California's Conservation and Process Guidelines (Guidelines) dated November 1993; and (2) the Service issues written concurrence that the plan meets the standards for issuance of an incidental take permit under 50 CFR 17.32(b)(2). Within enrolled subregions actively engaged in the preparation of an NCCP plan, the take of gnatcatchers will not be a violation of section 9 of the Act if such take results from activities conducted in accordance with the Guidelines. The Guidelines limit habitat loss during the interim planning period to no more than 5 percent of coastal sage scrub with lower long-term conservation potential in existence at the time of adoption of the 4(d) special rule.

The Guidelines specify criteria to evaluate the long-term conservation potential of sage scrub that is proposed for loss during the period that NCCP plans are being developed to assist participating jurisdictions in providing interim protection for areas that support habitat that is likely to be important to conservation of the gnatcatcher. These jurisdictions are—the Southern and Matrix subregions of Orange County; the cities of Rancho Palos Verdes and San Dimas in Los Angeles County; MSCP subareas in the cities of Santee, El Cajon, Chula Vista, and Coronado; the MHCP Subregion of northwestern San Diego County; the North County Subarea of San Diego's MSCP; San Diego County's MHCOSP; and six water districts in San Diego County.

We intend that participating jurisdictions will be able to continue to apply the 4(d) special rule within designated critical habitat and to issue Habitat Loss Permits, with the joint concurrence of us and the CDFG, provided the jurisdictions are actively working to complete their subarea plans and adhere to the Guidelines. To be consistent with the Guidelines, the jurisdictions must find, and we and CDFG must concur, that:

1. The proposed habitat loss is consistent with the interim loss criteria in the Guidelines and with any subregional process if established by the subregion:

(a) the habitat loss does not cumulatively exceed the 5 percent guideline;

(b) the habitat loss will not preclude connectivity between areas of high habitat values;

(c) the habitat loss will not preclude or prevent the preparation of the subregional NCCP;

(d) the habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with section 4.3 of the Guidelines.

2. The habitat loss will not appreciably reduce the likelihood of the survival and recovery of listed species in the wild, and

3. The habitat loss is incidental to otherwise lawful activities.

Because, in addition to avoiding jeopardy to the gnatcatcher, the Guidelines direct habitat loss to areas with low long-term conservation potential that will not preclude

development of adequate NCCP plans and ensure that connectivity between areas of high habitat value will be maintained, we believe that allowing a small percentage of habitat loss within designated critical habitat pursuant to the 4(d) rule is not likely to adversely modify or destroy critical habitat by appreciably reducing its value for both the survival and recovery of the species. When we make a final critical habitat determination, we will prepare a new biological opinion on the 4(d) rule to formally evaluate the effects of the rule on designated critical habitat.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U. S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave., Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6143).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data 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 specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. Although we could not identify any incremental effects of this proposed critical habitat designation above those impacts of listing, we will conduct an economic analysis to further evaluate this finding. We will conduct the economic analysis for this proposal prior to a final determination. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period for 30 days at that time to accept comments on the economic analysis or further comment on the proposed rule.

Public Comments Solicited

It is our intent 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, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this proposed rule.

In this proposed rule, we do not propose to designate critical habitat on nonFederal lands within the boundaries of an existing approved HCP and covered by an existing legally operative incidental take permit for California gnatcatchers issued under section 10(a)(1)(B) of the Act because the existing HCPs provide for development in nonessential areas and establish long-term commitments to conserve the species and areas essential to the conservation of the gnatcatcher. Therefore, we believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat;

(2) Designate reserves, preserves, and other conservation lands identified by approved HCPs, on the premise that they encompass areas that are essential to conservation of the species within the HCP area and that will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the gnatcatcher is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the gnatcatcher in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

Additionally, we are seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now underway for the gnatcatcher (and other listed and nonlisted species) in Orange, Los Angeles, Riverside, San Bernardino, and San Diego Counties in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the gnatcatcher—

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the gnatcatcher, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of HCPs when the plans are approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species and no additional special management or protection is required.

This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Additionally, we are seeking comments on the following—

(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 designation will outweigh any threats to the species due to designation or other consequences to conservation of the gnatcatcher resulting from designation;

(2) Specific information on the amount and distribution of gnatcatchers and what habitat is essential to the conservation of the species and why;

(3) Land use practices 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 the gnatcatcher 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).

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. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure 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 these peer reviewers 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 data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish the final determination by September 30, 2000, we have scheduled three hearings. The hearings are scheduled to be held in Anaheim for Los Angeles and Orange Counties on February 15, 2000; in San Diego for San Diego County on February 17, 2000; and in Riverside for Riverside and San Bernardino Counties on February 23, 2000. Written comments submitted during the comment period will receive equal consideration as comments presented at a public hearing. For additional information on public hearings see the **ADDRESSES** section.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following—(1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The coastal California gnatcatcher was listed as a threatened species in 1993. In fiscal years 1998 through 2000 we have conducted 50 formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the gnatcatcher. We have also issued an estimated 15 section 10(a)(1)(B) incidental take permits for entities that have prepared HCPs for areas where the species occurs.

The areas proposed for critical habitat are currently occupied by the coastal California gnatcatcher. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it does not impose any restrictions on nonFederal 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 conclude that any Federal action or 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 nonFederal persons that receive Federal authorization or funding. NonFederal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the coastal California gnatcatcher since the listing in 1993. The prohibition against adverse modification of critical habitat is not

expected to impose any additional restrictions to those that currently exist because all proposed critical habitat is occupied. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects.

(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 GNATCATCHER LISTING AND CRITICAL HABITAT DESIGNATION

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 such as removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.* noise, edge effects, invasion of exotic plants or animals, or fragmentation that the Federal Government carries out.	None
Private Activities Potentially Affected [4].	Activities such as removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.* woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (*e.g.* noise, edge effects, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding).	None

[1] This column represents the activities potentially affected by listing the gnatcatcher as a threatened species (March 30, 1993; 58 FR 16741) under the Endangered Species Act.
[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section) we have designated property owned by Federal, State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the BLM or Forest Service;

(4) Road construction and maintenance, right of way designation, and regulation of agricultural activities;

(5) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(6) Military training and maneuvers on Marine Corps Base Camp Pendleton and Marine Corps Air Station, Miramar and other applicable DOD lands;

(7) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed in section 1 above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on nonFederal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed in

section 1, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the coastal California gnatcatcher. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. 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 the gnatcatcher.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the coastal California gnatcatcher imposes no additional restrictions to those currently in place, and therefore has 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. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the gnatcatcher.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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 readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. The Appendix to Secretarial Order 3206 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) provides that critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species. The Appendix further provides that in designating critical habitat; "the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

We have determined that there are no Tribal lands essential for the conservation of the gnatcatcher because they do not support core gnatcatcher populations, nor do they provide essential linkages between core populations. Therefore, we are not proposing to designate critical habitat for the gnatcatcher on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this notice is Douglas Krofta (see **ADDRESSES** section)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for "Gnatcatcher, coastal California"' under "BIRDS" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * * * *							
BIRDS							
* * * * * * *							
Gnatcatcher, coastal California.	*Polioptila californica californica*	U.S.A. (CA), Mexico	do	T	496	17.95(b)	17.41(b)
* * * * * * *							

3. In § 17.95 add critical habitat for the coastal California gnatcatcher (*Polioptila californica californica*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Coastal California gnatcatcher (*Polioptila californica californica*)

1. Critical Habitat Units are depicted for Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, California, on the maps below.

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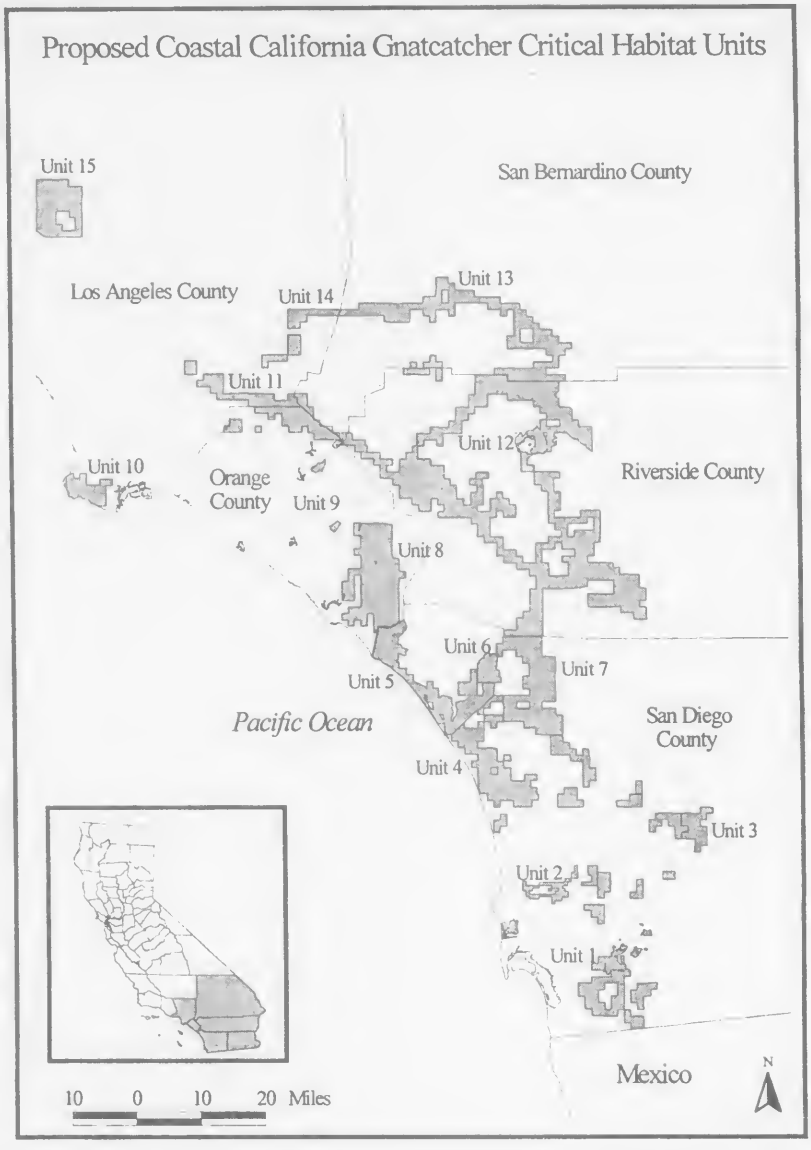
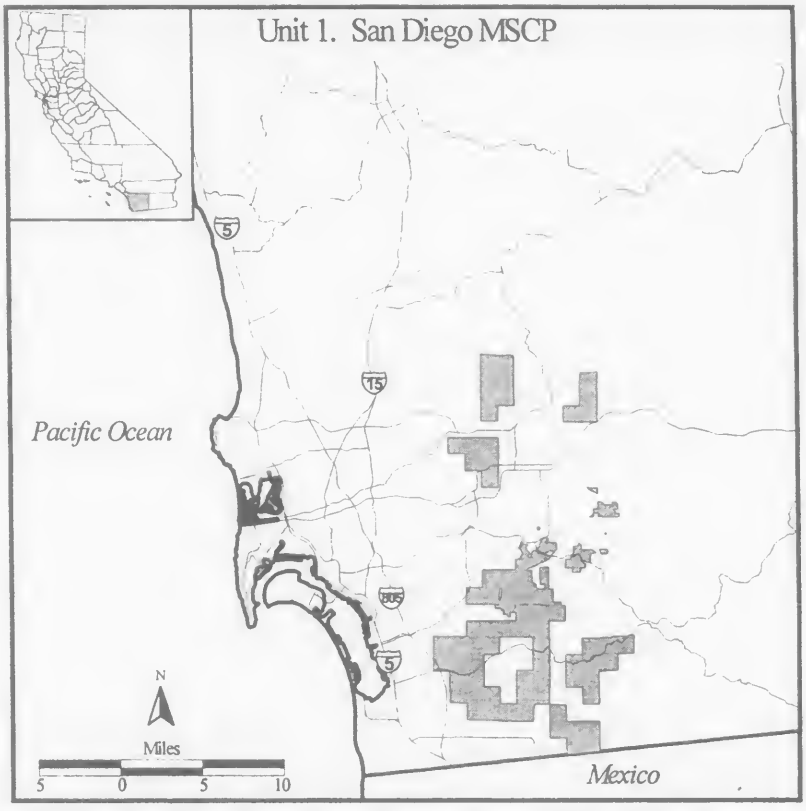


2. Within these areas, the primary constituent elements for the gnatcatcher are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in undeveloped areas, including agricultural lands, that support or have the potential to support, through natural successional processes, various types of sage scrub or support chaparral, grassland, and riparian habitats where they occur proximal to sage scrub and where they may be utilized for biological needs such as breeding and foraging (Atwood *et al.* 1998, Campbell *et al.* 1998). Primary constituent elements associated with the biological needs of dispersal are also found in undeveloped areas, including agricultural lands, that provide or could provide connectivity or linkage between or within larger core areas, including open space and disturbed areas that may receive only periodic use.

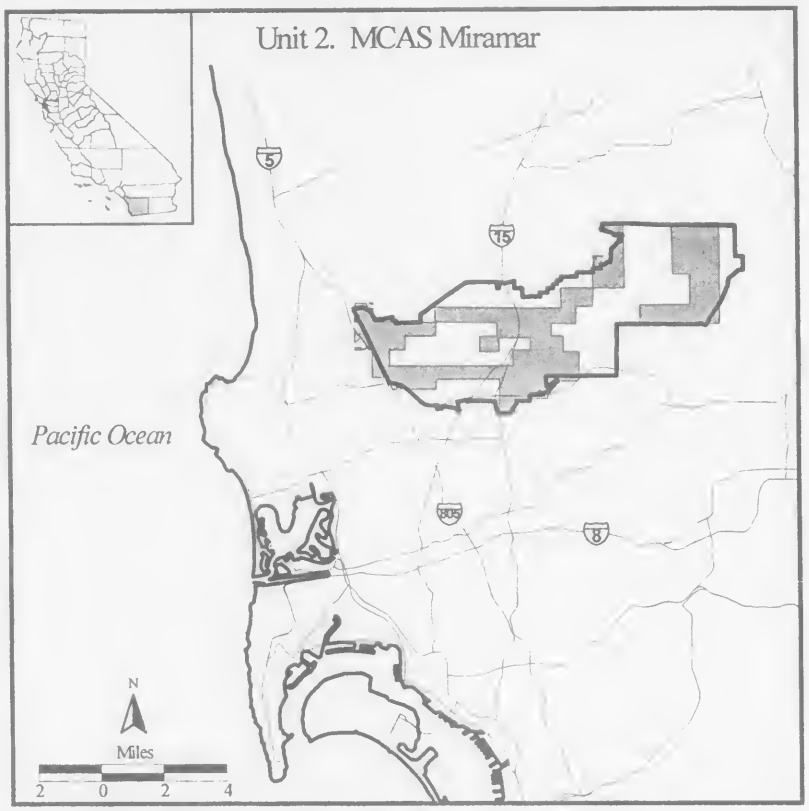
Primary constituent elements include, but are not limited to, the following plant communities: Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995). Dominant species within these plant communities include California sagebrush (*Artemisia californica*), buckwheats (*Eriogonum fasciculatum* and *E. cinereum*), encelias (*Encelia californica* and *E. farinosa*), and various sages (commonly *Salvia mellifera, S. apiana,* and *S. leucophylla*). Other commonly occurring plants include coast goldenbush (*Isocoma menziesii*), bush monkeyflower (*Mimulus aurantiacus*), Mexican elderberry (*Sambucus mexicana*), bladderpod (*Isomeris arborea*), deerweed (*Lotus scoparius*), chaparral mallow (*Malacothamnus fasciculatum*), and laurel sumac (*Malosma laurina*), and several species of *Rhus* (*R. integrifolia, R. ovata,* and *R. trilobata*). Succulent species, such as boxthorn (*Lycium spp.*), cliff spurge (*Euphorbia misera*), jojoba (*Simmondsia chinensis*), and various species of cacti (*Opuntia littoralis, O. prolifera, and Ferocactus viridescens*), and live-forever (*Dudleya spp.*), are represented in maritime succulent scrub, coast prickly-pear scrub, and southern coastal bluff scrubs.

3. Critical habitat does not include nonFederal lands covered by a legally operative incidental take permit for the coastal California gnatcatcher issued under section 10(a)(1)(B) of the Act on or before February 7, 2000.

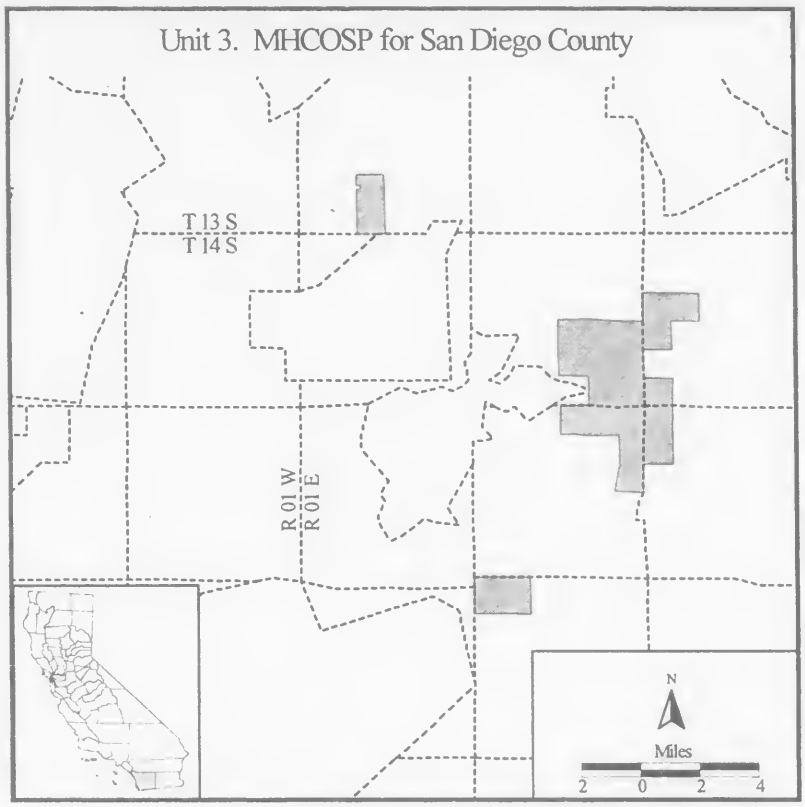


Map Unit 1: San Diego County MSCP, San Diego County, California. From USGS 1:100,000 quadrangle maps San Diego (1980) and El Cajon (1982), California. Lands defined by the boundaries of the Otay-Sweetwater Unit of the San Diego National Wildlife Refuge Complex and the San Miguel Major Amendment Area for the San Diego Multiple Species Conservation Program. Lands within T. 12 S., R. 01 E., San Bernardino Principal Meridian, secs. 28 and 33; T. 12 S., R. 01 W., San Bernardino Principal Meridian, secs. 20 and 30; T. 13 S., R. 01 E., San Bernardino Principal Meridian, sec. 5; T. 13 S., R. 02 W., San Bernardino Principal Meridian, sec. 12; T. 13 S., R. 03 W., San Bernardino Principal Meridian, secs. 2, 10, and 13; T. 14 S., R. 01 W., San Bernardino Principal Meridian, secs. 29 and 32; T. 14 S., R. 02 W., San Bernardino Principal Meridian, sec. 35; T. 15 S., R. 01 E., San Bernardino Principal Meridian, sec. 9; T. 15 S., R. 01 W., San Bernardino Principal Meridian, secs. 3–5; T. 15 S., R. 02 E., San Bernardino Principal Meridian, sec. 6; T. 15 S., R. 02 W., San Bernardino Principal Meridian, secs. 2, 3, and 12; T. 15 S., R. 03 W., San Bernardino Principal Meridian, sec. 9; T. 16 S., R. 01 W., San Bernardino Principal Meridian, sec. 5; T. 17 S., R. 01 E., San Bernardino Principal Meridian, secs. 19, 27, and 33–35; T. 17 S., R. 01 W., San Bernardino Principal Meridian, secs. 5, 10, 11, 15–17, 23–28, and 33; T. 18 S., R. 01 E., San Bernardino Principal Meridian, secs. 3–5, 8, 9, 16, 19, 28–30, 32, and 33; T. 18 S., R. 01 W., San Bernardino Principal Meridian, secs. 13, 17, 18, and 20–23. The following lands within Rincon del Diablo Land Grant: UTM coordinates (X, Y) 497000, 3667600; 497100, 3667600; 500000, 3664000; 497000, 3662400; 497000, 3667600. The following lands within San Bernardino (Snook) Land Grant: UTM coordinates (X, Y) 492200, 3661600; 495500, 3661600; 495500, 3658500; 497200, 3658500; 497000, 3657000; 496600, 3656700; 490600, 3656700; 490600, 3660000; 492200, 3660000; 492200, 3661600. The following lands within Canada de San Vicente y Mesa del Padre Barona Land Grant: UTM coordinates (X, Y) 515000, 3651400; 515000, 3650400; 513300, 3650400; 513300, 3651100; 515000, 3651400. The following lands within El Cajon Land Grant: UTM coordinates (X, Y) 501000, 3640000; 503600, 3640400; 503600, 3635600; 502000, 3635600; 502000, 3634100; 500300, 3634100; 500300, 3637200; 498100, 3637200; 501000, 3640000; 511600, 3638900; 511700, 3638900; 511700, 3634000; 508400, 3634000; 508400, 3635600; 510000, 3635600; 510000, 3638500; 511600, 3638900; 497000, 3632500; 502000, 3632500; 502000, 3627600; 500300, 3627600; 500300, 3629200; 498700, 3629200; 498700, 3630900; 497000, 3630900; 497000, 3632500. The following lands within Mission San Diego Land Grant: UTM coordinates (X, Y) 497000, 3632500; 502000, 3632500; 502000, 3627600; 500300, 3627600; 500300, 3629200; 498700, 3629200; 498700, 3630900; 497000, 3630900; 497000, 3632500. The following lands within Mission San Diego and Pueblo Lands of San Diego Land Grants: UTM coordinates (X, Y) 481600, 3637800; 485800, 3637400; 485800, 3636600; 484200, 3636600; 484200, 3635900; 483400, 3635900; 483400, 3635100; 489700, 3635100; 489700, 3635900; 490600, 3635900; 490600, 3636500; 489000, 3636500; 489000, 3635800; 488000, 3635800; 488000, 3636600; 488900, 3636600; 488900, 3637300; 491700, 3637300; 491700, 3636600; 492300, 3636600; 492300, 3635800; 493100, 3635800; 493100, 3634300; 491500, 3634300; 491500, 3633400; 489800, 3633400; 489800, 3632600; 489000, 3632600; 489000, 3634400; 485800, 3634400; 485800, 3633900; 483300, 3633900; 483300, 3634500; 482500, 3634500; 482500, 3635900; 481600, 3635900; 481600, 3637800. The following lands within Jamacho and La Nacion Land Grants: UTM coordinates (X, Y) 500300, 3619600; 504500, 3619600; 504500, 3619500; 504000, 3618000; 503000, 3617800; 502000, 3617800; 502000, 3617200; 500300, 3616200; 498700, 3616200; 498700, 3617900; 500300, 3617900; 500300, 3619600. The following lands within La Nacion, Otay (Dominguez), and Otay (Estudillo) Land Grants: UTM coordinates (X, Y) 498700, 3614600; 500500, 3614600; 501500, 3611300; 500400, 3611300; 500400, 3608200; 502000, 3608200; 502000, 3606500; 503600, 3606500; 503600, 3609800; 505200, 3609800; 505200, 3613000; 506900, 3613000; 506900, 3608000; 507000, 3607000; 507000, 3606000; 506300, 3606400; 505300, 3606400; 505300, 3606000; 501900, 3604900; 499900, 3604900; 497000,

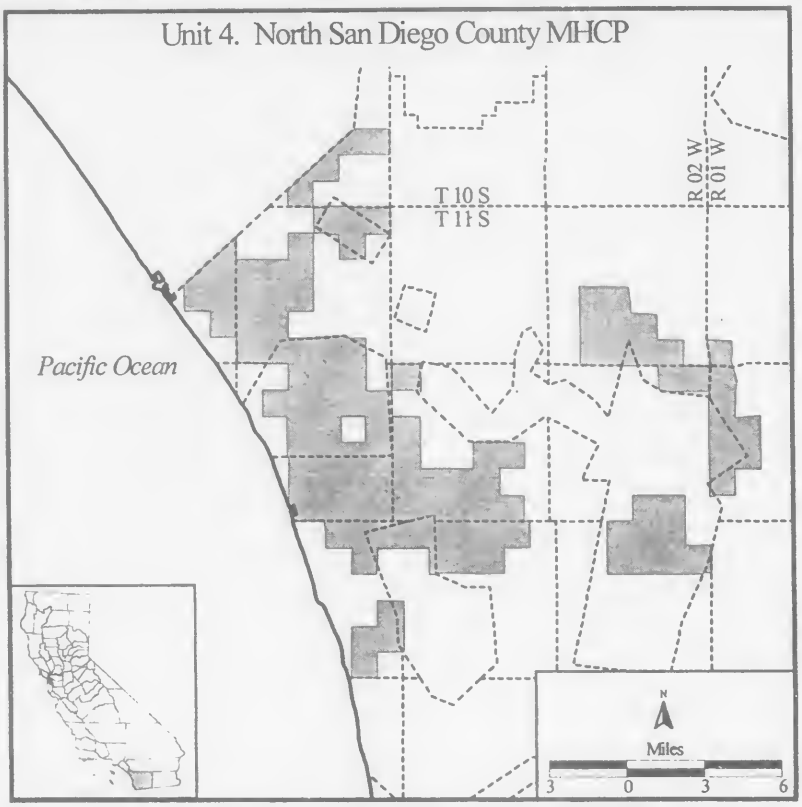
3607600; 497000, 3609700; 495400, 3609700; 495400, 3613100; 498700, 3613100; 498700, 3614600. The following lands within Jamul Land Grant: UTM coordinates (X, Y) 514600, 3613200; 515200, 3613200; 515200, 3612700; 514000, 3611000; 510000, 3610000; 510000, 3612000; 511900, 3613000; 513000, 3613000; 513000, 3613100; 514600, 3613100; 514600, 3613200.



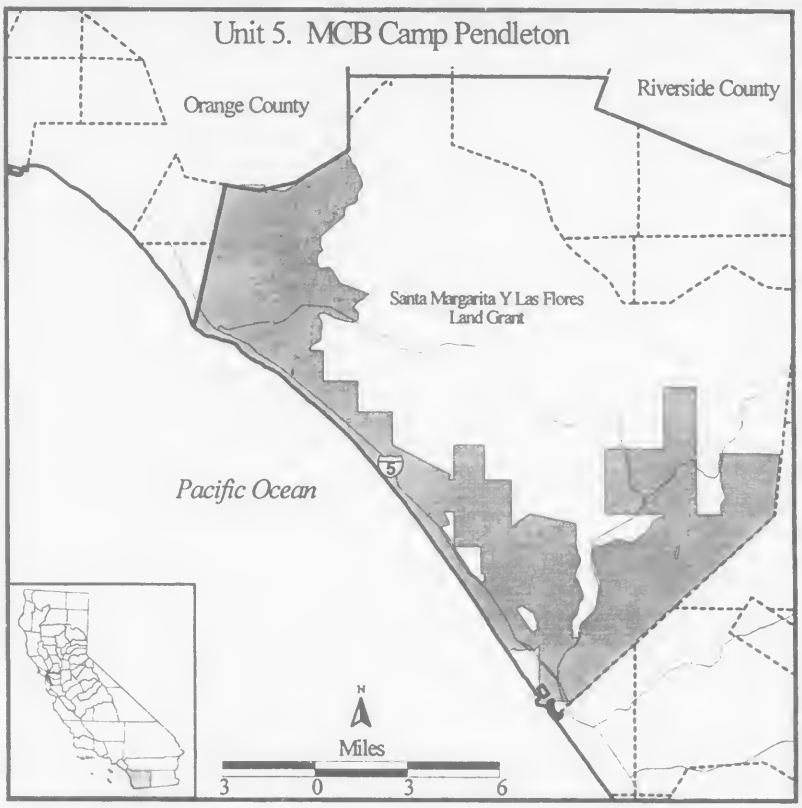
Map Unit 2: Marine Corps Station, Miramar, San Diego County, California. From USCS 1:100,000 quadrangle maps El Cajon (1982) and San Diego (1980), California. Lands within the following: T. 15 S., R. 3 W., San Bernardino Principal Meridian, SE. ¼ sec. 9; S. ½ sec. 12. Lands within T. 14 S., R. 2 W., San Bernardino Principal Meridian, E.½ sec. 35. Federal lands within T.. 15 S., R. 2 W., San Bernardino Principal Meridian, sec. 2; S. ½ sec. 7; S. ½ sec. 8; S½ sec. 9; sec. 10 except SE. ¼. Lands within T. 14 S., R. 1 W., San Bernardino Principal Meridian, E. ½ sec. 31; sec. 32. Lands within T. 15 S., R. 1 W., San Bernardino Principal Meridian, NE. ¼ sec. 6; sec. 5; S. ½ sec. 7; and sec. 8. Lands within T. 15 S., R. 2 W., San Bernardino Principal Meridian, SE. ¼ sec. 12. The following lands within El Cajon Land Grant: UTM coordinates (X, Y) 501000, 3640000; 503600, 3640400; 503600, 3635600; 502000, 3635600; 502000, 3634100; 500300, 3634100; 500300, 3637200; 498100, 3637200; 501000, 3640000. The following lands within Mission San Diego and Pueblo Lands of San Diego Land Grants: UTM coordinates (X, Y) 481600, 3637800; 485800, 3637400; 485800, 3636600; 484200, 3636600; 484200, 3635900; 483400, 3635900; 483400, 3635100; 489700, 3635100; 489700, 3635900; 490600, 3635900; 490600, 3636500; 489000, 3636500; 489000, 3635800; 488000, 3635800; 488000, 3636600; 488900, 3636600; 488900, 3637300; 491700, 3637300; 491700, 3636600; 492300, 3636600; 492300, 3635800; 493100, 3635800; 493100, 3634300; 491500, 3634300; 491500, 3633400; 489800, 3633400; 489800, 3632600; 489000, 3632600; 489000, 3634400; 485800, 3634400; 485800, 3633900; 483300, 3633900; 483300, 3634500; 482500, 3634500; 482500, 3635900; 481600, 3635900; 481600, 3637800.



Map Unit 3: Multiple Habitat Conservation Open Space Program (MHCOSP), San Diego County, California. From USGS 1:100,000 quadrangle map Borrego Valley, California (1983). Lands within T. 12 S., R. 01 E., San Bernardino Principal Meridian, secs. 28 and 33; T. 13 S., R. 02 E., San Bernardino Principal Meridian, secs. 22–27, 35, and 36; T. 13 S., R. 03 E., San Bernardino Principal Meridian, secs. 17–19, and 31; T. 14 S., R. 02 E., San Bernardino Principal Meridian, secs. 1–3, 12, and 13; T. 14 S., R. 03 E., San Bernardino Principal Meridian, secs. 6 and 7; T. 15 S., R. 02 E., San Bernardino Principal Meridian, secs. 5 and 6.

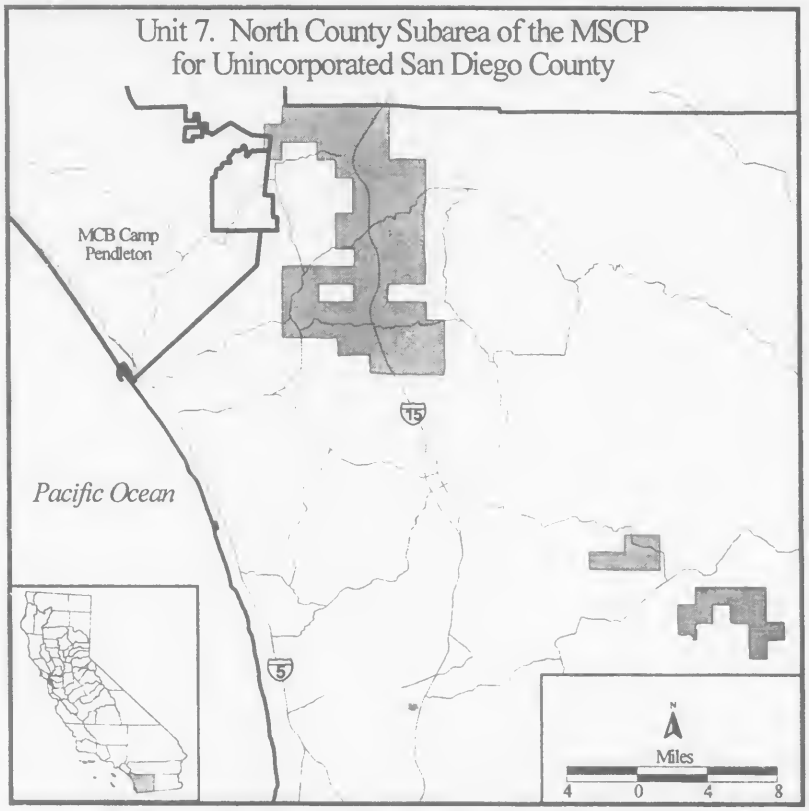


Map Unit 4: North San Diego County MHCP, San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984). Lands within T. 10 S., R. 04 W., San Bernardino Principal Meridian, secs. 22–24, 27, 28, and 33; T. 11 S., R. 01 W., San Bernardino Principal Meridian, sec. 31; T. 11 S., R. 02 W., San Bernardino Principal Meridian, secs. 20, 21, 27–29, and 32–35; T. 11 S., R. 04 W., San Bernardino Principal Meridian, secs. 1–3, 9, 11, 12, 16–21, 29–33, and 35; T. 11 S., R. 05 W., San Bernardino Principal Meridian, secs. 12–14, and 23–25; T. 12 S., R. 01 W., San Bernardino Principal Meridian, secs. 6, 7, 17–20, and 30; T. 12 S., R. 02 W., San Bernardino Principal Meridian, secs. 1 and 2; T. 12 S., R. 03 W., San Bernardino Principal Meridian, secs. 6, 18, 19, 22, 23, and 27-35; T. 12 S., R. 04 W., San Bernardino Principal Meridian, secs. 12, 13, 21–28, and 33–36; T. 13 S., R. 02 W., San Bernardino Principal Meridian, sec. 12; T. 13 S., R. 03 W., San Bernardino Principal Meridian, secs. 2–6, 8–10, and 13; T. 13 S., R. 04 W., San Bernardino Principal Meridian, secs. 1–3, 11, 24–26, and 35. The following lands within Guajome Land Grant: UTM coordinates (X, Y) 473300, 3679600; 474600, 3679600; 477300, 3677800; 477200, 3677700; 477200, 3677800; 475700, 3677800; 475700, 3676300; 475600, 3676300; 474000, 3677300; 474000, 3677800; 473300, 3677800; 472000, 3678000; 473300, 3679600. The following lands within Agua Hedionda Land Grant: UTM coordinates (X, Y) 474000, 3672000; 475700, 3670900; 475700, 3668100; 477100, 3668100; 478000, 3664000; 470700, 3664000; 470700, 3666500; 469200, 3666500; 469200, 3668200; 470800, 3668200; 470800, 3669800; 469400, 3669800; 470000, 3672000; 474000, 3672000; excluding UTM coordinates (X, Y) 474100, 3666500; 474100, 3664900; 475600, 3664900; 475600, 3666500; 474100, 3666500. The following lands within Rincon del Diablo Land Grant: UTM coordinates (X, Y) 492000, 3672000; 492700, 3669600; 491600, 3669600; 492000, 3672000; 497000, 3667600; 497100, 3667600; 500000, 3664000; 497000, 3662400; 497000, 3667600; 497000, 3662100; 497100, 3662100; 497400, 3661600; 497400, 3661500; 497000, 3661500; 497000, 3662100; 492200, 3661600; 495500, 3661600; 495500, 3658500; 497200, 3658500; 497000, 3657000; 496600, 3656700; 490600, 3656700; 490600, 3660000; 492200, 3660000; 492200, 3661600. The following lands within Los Vallecitos de San Marcos Land Grant: UTM coordinates (X, Y) 479000, 3669000; 479100, 3669000; 479100, 3668000; 478800, 3668000; 479000, 3669000. The following lands within San Bernardino (Snook) Land Grant: UTM coordinates (X, Y) 492200, 3661600; 495500, 3661600; 495500, 3658500; 497200, 3658500; 497000, 3657000; 496600, 3656700; 490600, 3656700; 490600, 3660000; 492200, 3660000; 492200, 3661600. The following lands within Los Encinitos and San Dieguito Land Grants: UTM coordinates (X, Y) 475000, 3660000; 480000, 3661000; 480000, 3656700; 479500, 3656700; 479500, 3658300; 476300, 3658300; 476300, 3657400; 476200, 3657400; 475000, 3660000; 477000, 3655100; 477900, 3655100; 477900, 3652000; 477800, 3652000; 477000, 3653000.

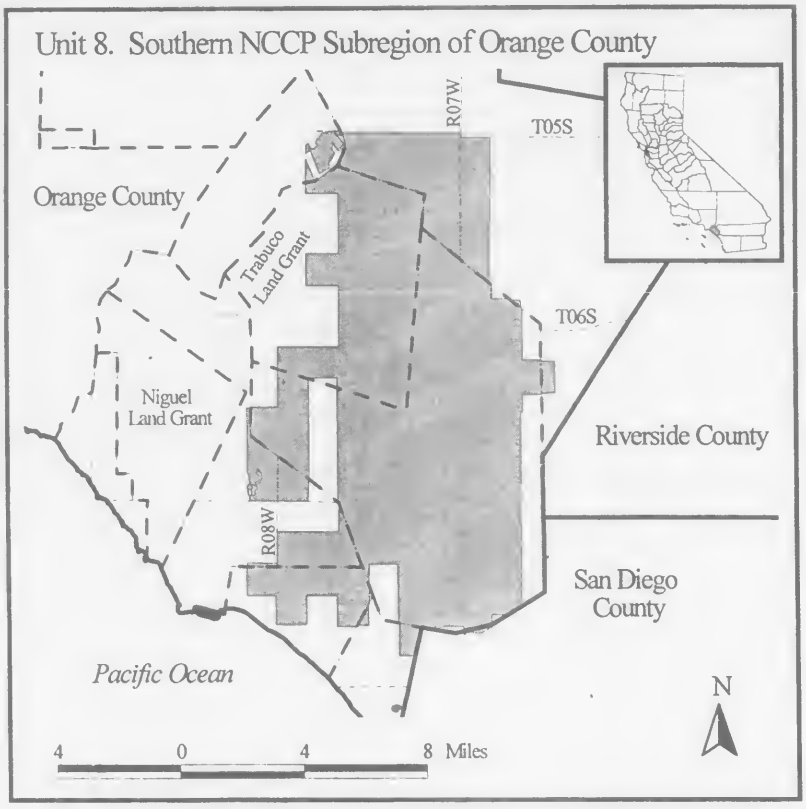


Map Unit 5: Marine Corps Base Camp Pendleton, San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984). Lands within T. 11 S., R. 05 W., San Bernardino Principal Meridian, sec. 22. The following lands within Santa Margarita y Las Flores Land Grant: UTM coordinates (X, Y) 440400, 3727400; 442300, 3727400; 447000, 3724000; 450100, 3719400; 450100, 3718600; 451100, 3718600; 451700, 3718100; 451700, 3715400; 452700, 3715400; 452700, 3713600; 451700, 3713600; 451700, 3712700; 451600, 3712700; 451600, 3702900; 451500, 3702900; 451500, 3702200; 450000, 3702200; 450000, 3700700; 448500, 3700700; 448500, 3701600; 447000, 3701600; 447000, 3700100; 445900, 3700100; 445100, 3701700; 445100, 3704800; 443600, 3704800; 443600, 3702700; 443000, 3701600; 441900, 3701600; 441900, 3703200; 440300, 3703200; 440300, 3701700; 438700, 3701700; 438700, 3703200; 437200, 3703200; 437200, 3704700; 443200, 3704700; 442000, 3708000; 442000, 3714500; 440500, 3714500; 440500, 3709200; 437000, 3711000; 437500, 3713000; 438900, 3713000; 438900, 3716100; 442100, 3716100; 442100, 3719300; 440400, 3719300; 440400, 3721000; 442100, 3721000; 442100, 3724100; 440400, 3724100; 440400, 3727400; 449800, 3692900; 451400, 3692900; 451400, 3691300; 453200, 3691300; 453200, 3689700; 455000, 3689700; 455000, 3688000; 453000, 3688000; 449800, 3690900; 449800, 3692900; 469200, 3691000; 470900, 3691000; 470900, 3684400; 475100, 3684400; 470800, 3680600; 470800, 3682700; 469200, 3682700; 469200, 3684400; 466100, 3684400; 466100, 3687800; 469200, 3687800; 469200, 3691000; 458200, 3688000; 459800, 3688000; 459800, 3686200; 461200, 3686200; 461200, 3681300; 459600, 3681300; 459600, 3682700; 458200, 3682700; 458200, 3684500; 456500, 3684500; 456500, 3686200; 458200, 3686200; 458200, 3688000; 462600, 3678000; 467700, 3678000; 467700, 3677700; 464400, 3674700; 462400, 3674700; 462600, 3675400. The Camp Pendleton Marine Corps Station Designated Areas (1996); Alpha One; Alpha Two; Bravo One; Bravo Two; Bravo Three; Juliett; Lima; Mike; November; Oscar One; Tango; Uniform; Victor; Agriculture Lease Area (North); 52 Area; 62 Area; 63 Area; 64 Area; San Onofre Housing Area; State Park Lease Area; Red Beach, White Beach; Asistencia de Las Flores; Edson Range Impact Area; Agriculture Lease Area (South); Mass 3; and Golf Course.

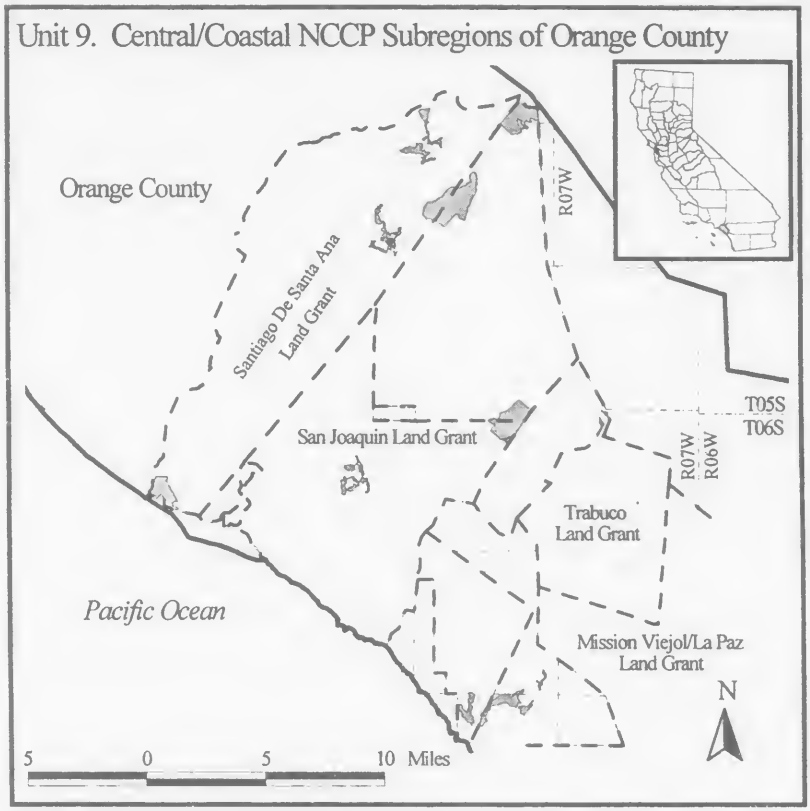
Map Unit 6: Fallbrook Naval Weapons Station, San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984): The following lands within the Santa Margarita y Las Flores Land Grant: Fallbrook Naval Weapons Station. The following Federal Lands associated with the Fallbrook Naval Weapons Station within T. 9 S., R. 4 W., San Bernardino Principal Meridian, secs. 35 and 36; T. 10 S., R. 4 W., San Bernardino Principal Meridian, secs. 1 and 2.



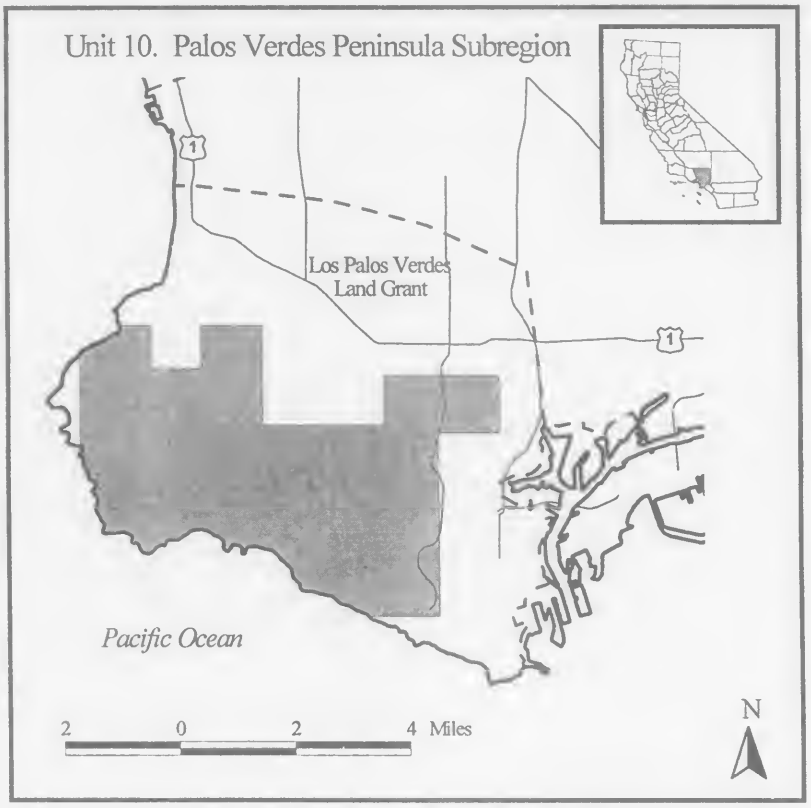
Map Unit 7: North County Subarea of the MSCP for Unincorporated San Diego County, California. From USGS 1:100,000 quadrangle map Oceanside, California (1984). Lands within T. 09 S., R. 02 W., San Bernardino Principal Meridian, secs. 19, 20, and 29–32; T. 09 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–16, 22–26, and 36; T. 09 S., R. 04 W., San Bernardino Principal Meridian, secs. 12 and 13; T. 10 S., R. 02 W., San Bernardino Principal Meridian, secs. 5–8, 17–20, 31, and 32; T. 10 S., R. 03 W., San Bernardino Principal Meridian, secs. 12–14, 19-26, and 29–36; T. 11 S., R. 02 W., San Bernardino Principal Meridian, secs. 4–9 and 16–18; T. 11 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–6 and 10–13; T. 13 S., R. 01 E., San Bernardino Principal Meridian, secs. 4, 5, 7, 8, 24, 25, 35, and 36; T. 13 S., R. 01 W., San Bernardino Principal Meridian, sec. 12; T. 13 S., R. 02 E., San Bernardino Principal Meridian, secs. 19–21, 28–30, 33, and 34; T. 14 S., R. 02 E., San Bernardino Principal Meridian, sec. 4. The following lands within Santa Margarita y Las Flores Land Grant: UTM coordinates (X, Y) 477000, 3697000; 476100, 3694000; 475700, 3694000; 475700, 3696200; 477000, 3697000. The following lands within Monserate Land Grant: UTM coordinates (X ,Y) 485000, 3693000; 488000, 3689000; 487000, 3685000; 484000, 3685900; 482200, 3685900; 482200, 3689200; 483800, 3689200; 483800, 3692500; 485000, 3693000. The following lands within Valle de Paro (or Santa Maria) Land Grant: UTM coordinates (X, Y) 511700, 3660000; 511700, 3656700; 506800, 3656700; 506800, 3656800; 511000, 3660000; 511700, 3660000; 514900, 3655200; 515300, 3655200; 515400, 3651900; 515000, 3651900; 515000, 3651700; 513300, 3651700; 513300, 3653600; 514900, 3653600; 514900, 3655200. The following lands within Canada de San Vicente y Mesa del Padre Barona Land Grant: UTM coordinates (X, Y) 516000, 3655000; 520000, 3655000; 519000, 3653000; 518100, 3652200; 518100, 3653600; 516400, 3653600; 516500, 3653300; 516500, 3651900; 516300, 3651900; 516000, 3653000; 519000, 3653000; 523000, 3652000; 523000, 3651000; 519800, 3649500; 519800, 3651900; 518500, 3651900; 518500, 3652000; 515000, 3651400; 515000, 3650400; 513300, 3650400; 513300, 3651100.



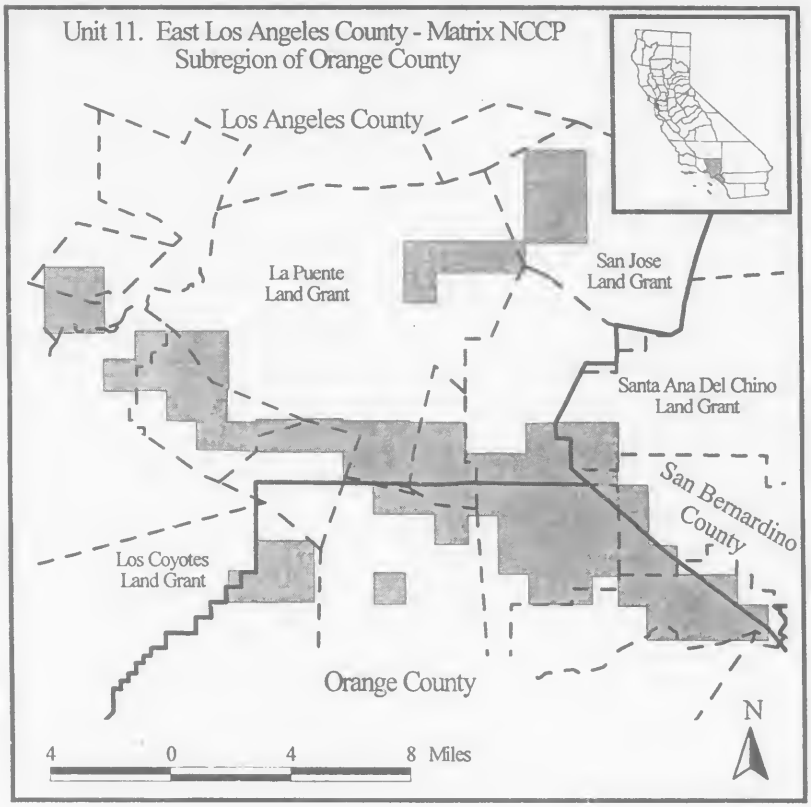
Map Unit 8: Southern NCCP Subregion of Orange County, California. From USGS 1:100,000 quadrangle maps Oceanside (1984) and Santa Ana (1985), California. Lands within T. 06 S., R. 06 W., San Bernardino Principal Meridian, secs. 6, 7, 18, 19, 30, and 32; T. 06 S., R. 07 W., San Bernardino Principal Meridian, secs. 1–4, 9–14, and 23–25; T. 07 S., R. 06 W., San Bernardino Principal Meridian, sec. 9; T. 07 S., R. 07 W., San Bernardino Principal Meridian, secs. 30 and 31; T. 07 S., R. 08 W., San Bernardino Principal Meridian, secs. 24, 25, and 36; T. 08 S., R. 07 W., San Bernardino Principal Meridian, secs. 4, 7–9, 16–18, 21, 23, and 26; T. 08 S., R. 068 W., San Bernardino Principal Meridian, sec. 13. The following lands within Boca de La Playa, Canada de Los Alisos, Mission Viejo/La Paz, and Trabuco Land Grants: UTM coordinates (X, Y) 440400, 3727400; 442300, 3727400; 447000, 3724000; 450100, 3719400; 450100, 3718600; 451100, 3718600; 451700, 3718100; 451700, 3715400; 452700, 3715400; 452700, 3713600; 451700, 3713600; 451700, 3712700; 451600, 3712700; 451600, 3702900; 451500, 3702900; 451500, 3702200; 450000, 3702200; 450000, 3700700; 448500, 3700700; 448500, 3701600; 447000, 3701600; 447000, 3700100; 445900, 3700100; 445100, 3701700; 445100, 3704800; 443600, 3704800; 443600, 3702700; 443000, 3701600; 441900, 3701600; 441900, 3703200; 440300, 3703200; 440300, 3701700; 438700, 3701700; 438700, 3703200; 437200, 3703200; 437200, 3704700; 443200, 3704700; 442000, 3708000; 442000, 3714500; 440500, 3714500; 440500, 3709200; 437000, 3711000; 437500, 3713000; 438900, 3713000; 438900, 3716100; 442100, 3716100; 442100, 3719300; 440400, 3719300; 440400, 3721000; 442100, 3721000; 442100, 3724100; 440400, 3724100; 440400, 3727400.



Map Unit 9: NCCP for Central/Coastal Subregions of Orange County (Central/Coastal NCCP), Orange County, California. From USGS 1:100,000 quadrangle maps Santa Ana (1985) and Oceanside (1984), California. Lands defined by the boundary of the designated reserve within Marine Corps Air Station El Toro within the Natural Communities Conservation Plan for the Central/Coastal Subregions. Lands within T. 06 S., R. 07 W., San Bernardino Principal Meridian, sec. 4; T. 07 S., R. 08 W., San Bernardino Principal Meridian, secs. 25 and 36. The following lands within Canon de Santa Ana and Lomas de Santiago Land Grants: UTM coordinates (X, Y) 412300, 3759800; 414500, 3759800; 414500, 3759700; 418100, 3759700; 418100, 3759600; 421100, 3759600; 421700, 3757500; 429300, 3756300; 429300, 3751500; 435600, 3751500; 435600, 3749900; 437200, 3749900; 437200, 3748000; 438000, 3748000; 437800, 3746600; 437100, 3746600; 437100, 3748000; 430700, 3748000; 430700, 3749800; 429200, 3749800; 429200, 3751400; 427800, 3751400; 427800, 3749900; 424400, 3749900; 424400, 3751500; 422800, 3751500; 422800, 3754600; 421200, 3754600; 421200, 3753100; 419400, 3753100; 419400, 3754700; 416100, 3754700; 416100, 3756400; 414500, 3756400; 414500, 3758000; 409800, 3758000; 409000, 3759000; 412300, 3759700; 412300, 3759800. The following lands within Canada de Los Alisos and Trabuco Land Grants: UTM coordinates (X, Y) 440400, 3727400; 442300, 3727400; 447000, 3724000; 450100, 3719400; 450100, 3718600; 451100, 3718600; 451700, 3718100; 451700, 3715400; 452700, 3715400; 452700, 3713600; 451700, 3713600; 451700, 3712700; 451600, 3712700; 451600, 3702900; 451500, 3702900; 451500, 3702200; 450000, 3702200; 450000, 3700700; 448500, 3700700; 448500, 3701600; 447000, 3701600; 447000, 3700100; 445900, 3700100; 445100, 3701700; 445100, 3704800; 443600, 3704800; 443600, 3702700; 443000, 3701600; 441900, 3701600; 441900, 3703200; 440300, 3703200; 440300, 3701700; 438700, 3701700; 438700, 3703200; 437200, 3703200; 437200, 3704700; 443200, 3704700; 442000, 3708000; 442000, 3714500; 440500, 3714500; 440500, 3709200; 437000, 3711000; 437500, 3713000; 438900, 3713000; 438900, 3716100; 442100, 3716100; 442100, 3719300; 440400, 3719300; 440400, 3721000; 442100, 3721000; 442100, 3724100; 440400, 3724100; 440400, 3727400.

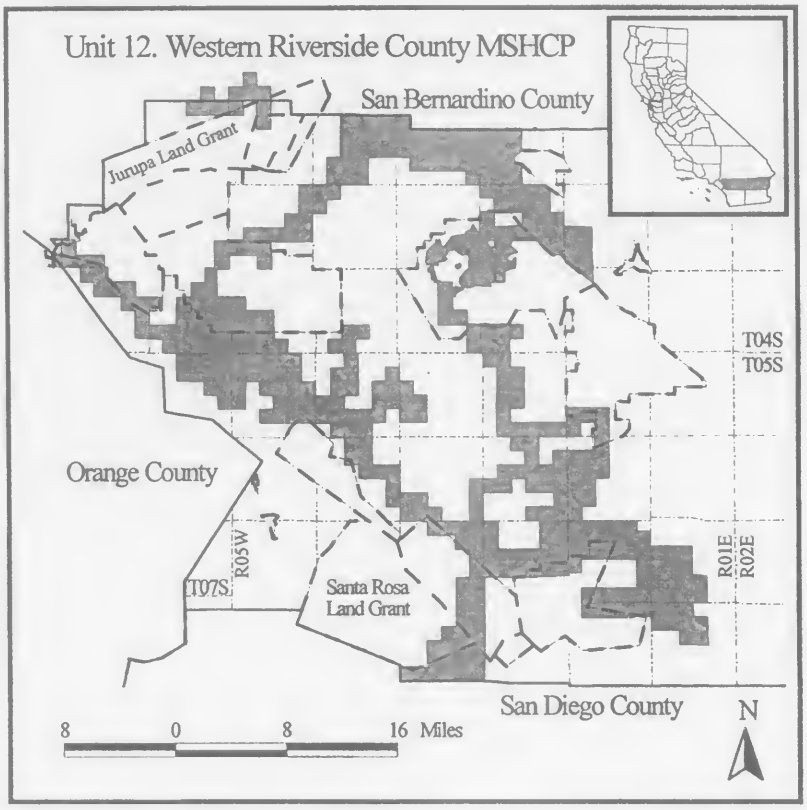


Map Unit 10: Palos Verdes Peninsula Subregion, Los Angeles County, California. From USGS 1:100,000 quadrangle map Long Beach, California (1981). The following lands within Los Palos Verdes Land Grant: UTM coordinates (X, Y) 369800, 3739900; 370700, 3739900; 370700, 3738700; 372100, 3738700; 372100, 3739900; 373800, 3739900; 373800, 3737100; 377200, 3737100; 377200, 3738500; 380400, 3738500; 380400, 3736900; 378700, 3736900; 378700, 3731800; 376500, 3731800; 369000, 3734000; 368700, 3735900; 368700, 3739300; 369800, 3739900.



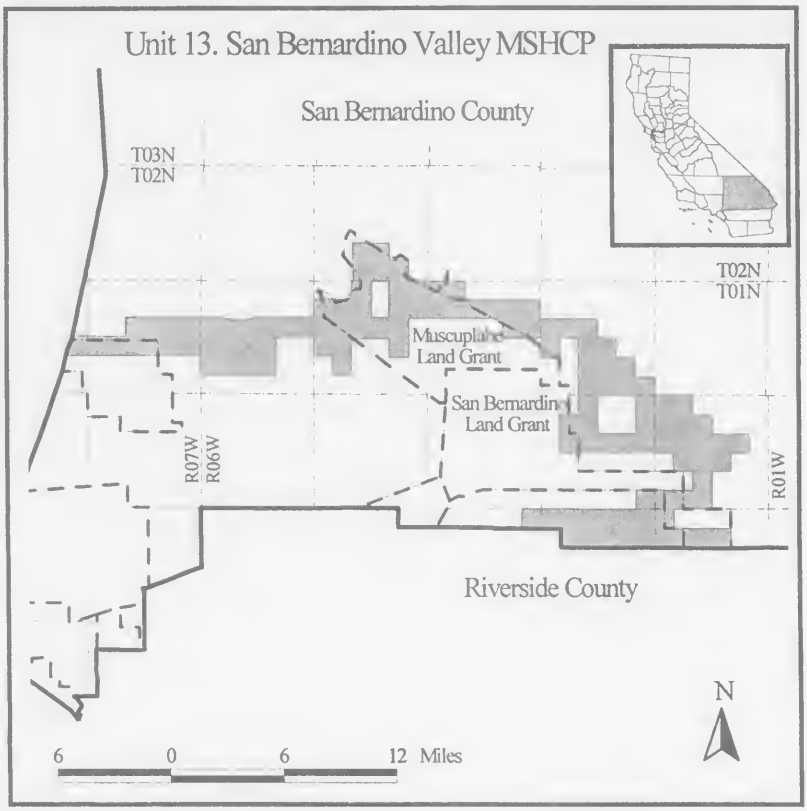
Map Unit 11: East Los Angeles-Orange County Matrix NCCP Subregion of Orange County, Los Angeles County and Orange County, California. From USGS 1:100,000 quadrangle maps Long Beach (1981), Los Angeles (1983), San Bernardino (1982), and Santa Ana (1985), California. Lands within T. 01 S., R. 09 W., San Bernardino Principal Meridian, secs. 28 and 33; T. 02 S., R. 08 W., San Bernardino Principal Meridian, sec. 31; T. 02 S., R. 09 W., San Bernardino Principal Meridian, secs. 20, 22, 23, 26, 27, 29, and 32–36; T. 02 S., R. 10 W., San Bernardino Principal Meridian, secs. 20, 29, and 30; T. 02 S., R. 11 W., San Bernardino Principal Meridian, secs. 3, 9, 10, 13–16, 21–23, 25, 26, and 36; T. 03 S., R. 08 W., San Bernardino Principal Meridian, secs. 6, 7, 14, 17, and 18; T. 03 S., R. 10 W., San Bernardino Principal Meridian, secs. 1–3. The following lands within La Puente and San Jose Dalton et al. Land Grants: UTM coordinates (X, Y) 424400, 3774200; 427700, 3774200; 427700, 3769200; 424400, 3769200; 424400, 3767900; 424200, 3767600; 419600, 3767600; 419600, 3766000; 417900, 3766000; 417900, 3769300; 424400, 3769300; 424400, 3774200. The following lands within Paso de Bartolo (Pico), Potrero Grande, San Antonion (Lugo), San Francisquito (Dalton), and unnamed Land Grants: UTM coordinates (X, Y) 401800, 3767900; 401800, 3764400; 398600, 3764400; 398600, 3767900; 401800, 3767900. The following lands within Paso de Bartolo (Pico) Land Grant: UTM coordinates (X, Y) 403400, 3764500; 405100, 3764500; 405000, 3762000; 403500, 3761300; 401700, 3761300; 401700, 3763000; 403400, 3763000; 403400, 3764500. The following lands within La Puente Land Grant: UTM coordinates (X, Y) 405500, 3764500; 408400, 3764500; 408400, 3761400; 406000, 3762000; 406000, 3763000; 405500, 3764500. The following lands within Canon de Santa Ana, La Habra, La Puente, Lomas de Santiago, Rincon de La Brea, San Juan Cajon de Santa Ana, Santiago de Santa Ana, and unnamed Land Grants: UTM coordinates (X, Y) 412300, 3759800; 414500, 3759800; 414500, 3759700; 418100, 3759700; 418100, 3759600; 421100, 3759600; 421700, 3757500; 429300, 3756300; 429300, 3751500; 435600, 3751500; 435600, 3749900; 437200, 3749900; 437200, 3748000; 438000, 3748000; 437800. 3746600; 437100, 3746600; 437100, 3748000; 430700, 3748000; 430700, 3749800; 429200, 3749800; 429200, 3751400; 427800, 3751400; 427800, 3749900; 424400, 3749900; 424400, 3751500; 422800, 3751500; 422800, 3754600; 421200, 3754600; 421200, 3753100; 419400, 3753100; 419400, 3754700; 416100, 3754700;

416100, 3756400; 414500, 3756400; 414500, 3758000; 409800, 3758000; 409000, 3759000; 412300, 3759700; 412300, 3759800. The following lands within Santa Ana del Chino (addition to) Land Grants: UTM coordinates (X, Y) 425900, 3759600; 429300, 3759600; 429300, 3757000; 426700, 3757100; 425900, 3758700; 425900, 3759600. The following lands within La Habra and Los Coyotes Land Grants: UTM coordinates (X, Y) 409700, 3753300; 412900, 3753300; 412900, 3750000; 408300, 3750000; 408300, 3751700; 409700, 3751700; 409700, 3753300. The following lands within San Juan Cajon de Santa Ana Land Grant: UTM coordinates (X, Y) 416100, 3751600; 417800, 3751600; 417800, 3749900; 416100, 3749900; 416100, 3751600.



Map Unit 12: Western Riverside County MSHCP, Riverside County, California. From USGS 1:100,000 quadrangle maps Santa Ana (1985) and San Bernardino (1982), California. Lands defined by the boundary of the Lake Perris/San Jacinto Core Reserve. Lands within T. 01 S., R. 05 W., San Bernardino Principal Meridian,. secs. 29 and 31–33; T. 01 S., R. 06 W., San Bernardino Principal Meridian, sec. 35; T. 02 S., R. 02 W., San Bernardino Principal Meridian, secs. 8, 16–21, and 28–33; T. 02 S., R. 03 W., San Bernardino Principal Meridian, secs. 7, 8, 13–29, and 36; T. 02 S., R. 04 W., San Bernardino Principal Meridian, secs. 9–16, 21–24, 27–29, and 32–34; T. 02 S., R. 05 W., San Bernardino Principal Meridian, secs. 4 and 6; T. 02 S., R. 06 W., San Bernardino Principal Meridian, secs. 1–3; T. 03 S., R. 01 W., San Bernardino Principal Meridian, secs. 19, 20, and 29–32; T. 03 S., R. 02 W., San Bernardino Principal Meridian, secs. 2–6, 8–11, 13–15, 21–26, and 36; T. 03 S., R. 03 W., San Bernardino Principal Meridian, secs. 21and 29; T. 03 S., R. 04 W., San Bernardino Principal Meridian, secs. 5–7; T. 03 S., R. 05 W., San Bernardino Principal Meridian, secs. 1, 12–1420–24, and 27; T. 03 S., R. 07 W., San Bernardino Principal Meridian, secs. 29–33; T. 03 S., R. 08 W.,

San Bernardino Principal Meridian, secs. 25 and 36; T. 04 S., R. 01 W., San Bernardino Principal Meridian, sec. 5; T. 04 S., R. 02 W., San Bernardino Principal Meridian, secs. 20 and 28–32; T. 04 S., R. 03 W., San Bernardino Principal Meridian, secs. 25 and 36; T. 04 S., R. 04 W., San Bernardino Principal Meridian, secs. 27, 28, 32, and 33; T. 04 S., R. 05 W., San Bernardino Principal Meridian, secs. 28–34; T. 04 S., R. 06 W., San Bernardino Principal Meridian, secs. 16, 18, 21, 22, 25–30, and 32–36; T. 04 S., R. 07 W., San Bernardino Principal Meridian, secs. 4, 5, 9–11, 13, 14, 24, and 25; T. 05 S., R. 01 W., San Bernardino Principal Meridian, secs. 28–31 and 33; T. 05 S., R. 02 W., San Bernardino Principal Meridian, secs. 5, 6, 8, 9, 16, 17, 20, 21, 29, and 33–36; T. 05 S., R. 03 W., San Bernardino Principal Meridian, secs. 18–20, 29, and 30; T. 05 S., R. 04 W., San Bernardino Principal Meridian, secs. 4, 8, 9, 12–14, 16, 17, 19, 20, 23, 24, 26–30, and 32–34; T. 05 S., R. 05 W., San Bernardino Principal Meridian, secs. 2–11, 13–16, 18, 19, and 22–28; T. 05 S., R. 06 W., San Bernardino Principal Meridian, secs. 1–4, 9–14, and 24; T. 06 S., R. 01 W., San Bernardino Principal Meridian, secs. 4, 7–9, 16–20, and 29–31; T. 06 S., R. 02 W., San Bernardino Principal Meridian, secs. 3, 4, 10, 12–17, 19, 20, 22–25, and 34–36; T. 06 S., R. 03 W., San Bernardino Principal Meridian, secs. 24, 25, 29–33, and 36; T. 06 S., R. 04 W., San Bernardino Principal Meridian, secs. 3, 4, 9, 10, 13–15, 24, and 25; T. 07 S., R. 01 E., San Bernardino Principal Meridian, secs. 16–21 and 27–34; T. 07 S., R. 01 W., San Bernardino Principal Meridian, secs. 2–18, 24, 25, and 32–36; T. 07 S., R. 02 W., San Bernardino Principal Meridian, secs. 1, 2, 6, 7, and 11–22; T. 07 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–4, 11–13, and 24; T. 08 S., R. 01 E., San Bernardino Principal Meridian, secs. 4–10, 15, and 16; T. 08 S., R. 01 W., San Bernardino Principal Meridian, secs. 1–5; T. 08 S., R. 03 W., San Bernardino Principal Meridian, secs. 23–28 and 31–36. The following lands within Jurupa (Rubidoux) and Jurupa (Stearns) Land Grants: UTM coordinates (X, Y) 463100, 3766300; 463100, 3762500; 461400, 3762500; 461400, 3765700; 463100, 3766300; 459900, 3765100; 459900, 3764100; 457400, 3764100; 457400, 3764200; 459900, 3765100. The following lands within Canon de Santa Ana, Lomas de Santiago Land Grants: UTM coordinates (X, Y) 412300, 3759800; 414500, 3759800; 414500, 3759700; 418100, 3759700; 418100, 3759600; 421100, 3759600; 421700, 3757500; 429300, 3756300; 429300, 3751500; 435600, 3751500; 435600, 3749900; 437200, 3749900; 437200, 3748000; 438000, 3748000; 437800, 3746600; 437100, 3746600; 437100, 3748000; 430700, 3748000; 430700, 3749800; 429200, 3749800; 429200, 3751400; 427800, 3751400; 427800, 3749900; 424400, 3749900; 424400, 3751500; 422800, 3751500; 422800, 3754600; 421200, 3754600; 421200, 3753100; 419400, 3753100; 419400, 3754700; 416100, 3754700; 416100, 3756400; 414500, 3756400; 414500, 3758000; 409800, 3758000; 409000, 3759000; 412300, 3759700; 412300, 3759800. The following lands within El Sobrante de San Jacinto Land Grant: UTM coordinates (X, Y) 463000, 3750000; 463100, 3748500; 463100, 3746300; 461400, 3746300; 461400, 3747900; 458200, 3747900; 458200, 3746300; 456700, 3746300; 456700, 3743200; 460000, 3743200; 460000, 3741600; 463300, 3741600; 463300, 3739000; 456000, 3739000; 452000, 3742000; 452800, 3743200; 453700, 3743200; 453700, 3744800; 455300, 3744800; 455300, 3746500; 456400, 3746500; 456400, 3749600; 458100, 3749600; 463000, 3750000. The following lands within La Sierra (Yorba) Land Grant: UTM coordinates (X, Y) 440400, 3749500; 440400, 3748000; 443700, 3748000; 443700, 3746600; 444100, 3746600; 444100, 3745300; 443900, 3745300; 438700, 3747900; 438700, 3749500; 440400, 3749500; 444500, 3744900; 447300, 3744900; 447300, 3743200; 450500, 3743200; 450000, 3741000; 448000, 3741000; 444500, 3744800; 444500, 3744900. The following lands within San Jacinto Viejo Land Grant: UTM coordinates (X, Y) 497000, 3730400; 502000, 3730400; 502000, 3726400; 500300, 3725800; 500300, 3728000; 497000, 3729000; 497000, 3730400. The following lands within La Laguna (Stearns) Land Grant: UTM coordinates (X, Y) 466000, 3730000; 467000, 3730000; 467600, 3728600; 465500, 3728600; 466000, 3730000; 472000, 3725000; 472200, 3723900; 472200, 3723800; 471300, 3723800; 471300, 3724500. The following lands within Temecula Land Grant: UTM coordinates (X, Y) 480000, 3718000; 481000, 3718000; 483400, 3715700; 480900, 3715700; 480900, 3717300; 480200, 3717300; 480200, 3717400; 480000, 3718000; 484100, 3714100; 484100, 3715100; 485200, 3714100; 484100, 3714100; 488000, 3712000; 488700, 3710900; 487500, 3710900; 487500, 3702000; 480800, 3701000; 480800, 3703700; 482500, 3703700; 482500, 3705300; 484200, 3705300; 484200, 3710900; 485800, 3710900; 485800, 3713600; 488000, 3712000. The following lands within Santa Rosa (Morino) Land Grant: UTM coordinates (X, Y) 488000, 3712000; 488700, 3710900; 487500, 3710900; 487500, 3702000; 480800, 3701000; 480800, 3703700; 482500, 3703700; 482500, 3705300; 484200, 3705300; 484200, 3710900; 485800, 3710900; 485800, 3713600; 488000, 3712000; 478300, 3700700; 479900, 3700700; 479900, 3700600; 479000, 3700000; 478300, 3700600. The following lands within San Jacinto Neuvo y Potrero Land Grant: UTM coordinates (X, Y) 490000, 3754000; 490900, 3752800; 488900, 3752800; 488900, 3749600; 487200, 3749600; 487200, 3753000; 490000, 3754000; 490500, 3751300; 492100, 3751300; 493900, 3749600; 490500, 3749600; 490500, 3751300; 482300, 3744800; 484000, 3744800; 484000, 3741600; 485700, 3741600; 485700, 3740000; 490400, 3740000; 489000, 3739000; 485600, 3739100; 485600, 3739900; 482300, 3739900; 482300, 3744800. The following lands within Pauba Land Grant: UTM coordinates (X, Y) 503000, 3715000; 501800, 3713000; 498700, 3713000; 498700, 3711400; 497300, 3711400; 497300, 3711100; 495700, 3711100; 495700, 3711000; 493500, 3711000; 493500, 3710900; 492300, 3710900; 492300, 3711000; 492000, 3712000; 502000, 3716000; 503000, 3715000; 498700, 3709700; 500400, 3709700; 506000, 3707000; 506300, 3706400; 504800, 3706400; 504800, 3706300; 498700, 3706300.



Map Unit 13: San Bernardino Valley MSHCP, San Bernardino County, California. From USGS 1:100,000 quadrangle map San Bernardino, California (1982). Lands within T. 01 N., R. 03 W., San Bernardino Principal Meridian, secs. 16–19, 21, 22, 26–28, 30, and 33–36; T. 01 N., R. 04 W., San Bernardino Principal Meridian, secs. 5, 6, 9–15, and 24; T. 01 N., R. 05 W., San Bernardino Principal Meridian, secs. 1, 4, 7, 8, 17–20, and 29; T. 01 N., R. 06 W., San Bernardino Principal Meridian, secs. 13–22 and 27–30; T. 01 N., R. 07 W., San Bernardino Principal Meridian, secs. 13–16, and 19–24. T. 01 N., R. 08 W., San Bernardino Principal Meridian, sec. 24; T. 01 S., R. 02 W., San Bernardino Principal Meridian, secs. 5–9, 14–18, 20–22, 28, and 31–33; T. 01 S., R. 03 W., San Bernardino Principal Meridian, secs. 1, 4, 8, 9, 12–16, and 36; T. 02 N., R. 05 W., San Bernardino Principal Meridian, secs. 21, 27, 28, 33, and 35; T. 02 S., R. 02 W., San Bernardino Principal Meridian, secs. 6–10; T. 02 S., R. 03 W., San Bernardino Principal Meridian, secs. 1–6 and 8–12; T. 02 S., R. 04 W., San Bernardino Principal Meridian, sec. 1. The following lands within Muscupiabe Land Grant: UTM coordinates (X, Y) 461600, 3788400; 463000, 3788400; 464800, 3787300; 464800, 3786900; 466300, 3786900; 466400, 3785500; 466400, 3785200; 467000, 3785200; 469300, 3785100; 469700, 3785100; 472000, 3784000; 473700, 3781900; 466400, 3781900; 466400, 3778600; 464700, 3778600; 464700, 3780200; 461400, 3780200; 459000, 3782000; 459000, 3783600; 461400, 3783600; 461400, 3784200; 461600, 3786200; 461600, 3788400; excluding UTM coordinates 463200, 3785100; 463200, 3782000; 464700, 3782000; 464700, 3785100; 463200, 3785100. The following lands within Cucamonga Land Grant: UTM coordinates (X, Y) 437000, 3781000; 445000, 3781000; 445000, 3778800; 437000, 3778800; 437000, 3781000. The following lands within San Bernardino Land Grant: UTM coordinates (X, Y) 479200, 3773800; 480100, 3773800; 480100, 3772200; 480900, 3772200; 480900, 3770500; 479200, 3770500; 479200, 3773800; 488000, 3767300; 489700, 3767300; 489700, 3765700; 488900, 3765700; 488900, 3764100; 488000, 3764100; 488000, 3767300; 489700, 3764100; 493700, 3764100; 493700, 3762400; 489600, 3762400; 489700, 3764100.

Map Unit 14: East Los Angeles County Linkage, Los Angeles County, California. From USGS 1:100,000 quadrangle map Los Angeles, California (1983). Lands within T. 01 N., R. 08 W., San Bernardino Principal Meridian, secs. 19–24: T. 01 N., R. 09 W., San Bernardino Principal Meridian, secs. 22–27, 34, and 35; T. 01 S., R. 09 W., San Bernardino Principal Meridian, sec. 2. The following lands within Cucamonga Land Grant: UTM coordinates (X, Y) 437000, 3781000; 445000, 3781000; 445000, 3778800; 437000, 3778800; 437000, 3781000. The following lands within San Jose (Dalton et al.) and San Jose Addition Land Grants: UTM coordinates (X, Y) 427000, 3776000; 427300, 3775700; 424400, 3775700; 424400, 3776500; 427000, 3776000.

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Map Unit 15: Western Los Angeles County, California. From USGS 1:100,000 quadrangle map Los Angeles, California (1983). Lands within T. 03 N., R. 14 W., San Bernardino Principal Meridian, secs. 6, 7, 18, and 19; T. 03 N., R. 15 W., San Bernardino Principal Meridian, secs. 1, 4–9, and 15–24; T. 04 N., R. 14 W., San Bernardino Principal Meridian, secs. 18, 19, 30, and 31; T. 04 N., R. 15 W., San Bernardino Principal Meridian, secs. 7–11, 13–36. The following lands within Ex Mission de San Fernando Land Grant: UTM coordinates (X, Y) 369500, 3799000; 369600, 3799000; 370200, 3798700; 364300, 3798700; 364300, 3798800; 369500, 3799000.

Dated: February 1, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–2600 Filed 2–2–00; 1:12 pm]

BILLING CODE 4310–55–P

Federal Register

Monday,
February 7, 2000

Part IV

Department of Health and Human Services

Administration for Children and Families

Administration for Native Americans FY 2000 Availability of Financial Assistance for Native American Languages; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–003]

Administration for Native Americans FY 2000 Availability of Financial Assistance for Native American Languages

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Notice.

SUMMARY: The Administration for Native Americans (ANA) announces the availability of Fiscal Year 2000 funds and other available funds for Native American language projects. Financial assistance provided by ANA is designed to assist applicants in designing projects which will promote the survival and continuing vitality of Native American languages.

Special Note: The Administration for Native Americans advises all applicants that grant awards made under this announcement will have a September 30, 2000 project Start Date. Applicants should, therefore develop projects that begin no earlier than this date.

Application Kit: Application kits, approved by the OMB under control number 0980–0204, which expires August 31, 2000, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained by calling: The Applicant Help Desk, Administration for Native Americans, 202–690–7843.

Application kits may also be obtained from ANA training and technical assistance providers. ANA employs contractors to provide short-term training and technical assistance (T/TA) to eligible applicants. T/TA is available under these contracts for a wide range of grant application needs, however, the contractors are not authorized to write applications. The Training and Technical Assistance (T/TA) is provided at no cost.

The ANA Providers serve six areas divided as follows:

Area I, Eastern serves federally recognized Tribes in AL, AR, CT, DC, DE, FL, GA, IL, IN, KY, LA, MA, MD, ME, MI, MN, MS, NC, NH, NJ, NY, OH, PA, RI, SC, TN, VA, VT, WI, and WV.

Area II, Central serves federally recognized Tribes in AZ, CO, IA, KS, ND, NE, NM, MO, MT, OK, SD, UT, WY, NV, ID, and TX.

Area III, Western serves federally recognized Tribes in CA, OR, and WA.

Area IV, Alaska serves all eligible applicants in AK.

Area V, Pacific serves all eligible applicants in Hawaii (HI) and the Pacific Islands of American Samoa (AS), Guam (GU), Northern Mariana Islands (MP), and Palau (PW).

Area VI, National serves all eligible applicants on the mainland United States not served by providers for areas 1 through 5. This includes non-federally recognized Tribes, Urban Indians, off-reservation rural Indian communities, Native Americans served through non-federally recognized urban and consortia arrangements and organizations serving Native Hawaiians and Pacific Island Natives living on the Mainland.

ANA employs contracting firms to provide short-term training and technical assistance (T/TA) to clients in the six identified, geographical regions which are served by ANA. The ANA training and technical assistance (T/TA) contractors and their Geographic Areas are:

Geographic Area I

Eastern

Native American Management Services, Inc., Tonya Parker, Project Director, 6858 Old Dominion Drive, Suite 302, McLean, Va. 22101, (703) 821–2226, Fax (703) 821–3680 or (703) 821–8626, 1 (800) 388–7670 (Toll Free), e-mail: *nams@namsinc.org.*

Geographic Area II

Central

RJS & Associates, Inc., Dr. Robert J. Swan, C.E.O., RR1, Box 694, Box Elder, Mt. 59521, (406) 395–4727, Fax (406) 395–4759, 1 (888) 838–4757 (Toll Free), Website: *http://www.rjsinc.org/region2.html,* e-mail: *rjsinc@rjsinc.org.*

Geographic Area III

Western

Development Associates, Inc., E. Robles, Project Director, 1475 North Broadway, Suite 200, Walnut Creek, Ca. 94596, (925) 935–9711, 1 (800) 666–9711 (Toll Free), Fax (925) 935–0413, Website: *http://www.devassoc.com/ana/anaversion2.htm,* e-mail: *ana3@devassoc.com.*

Geographic Area IV

Alaska

Native American Management Services, Inc., P.J. Wilkins-Bell, Project Director, 1515 Tudor Road, Suite No. #4, Anchorage, Alaska 99519, (907) 770–6230, Fax (907) 770–6232, e-mail: *pbell@gci.com.*

Geographic Area V

Pacific

Please call the ANA Help Desk at (202) 690–7776 to learn the name and telephone number of the T/TA Provider for this area. ANA is issuing a new contract for this geographic area.

Geographic Area VI

National

RJS & Associates, Inc., Dr. Robert J. Swan, C.E.O., RR 1, Box 694, Box Elder, Mt. 59521, (406) 395–4757, Fax (406) 395–4759, 1 (888) 838–4757 (Toll Free), Website: *http://www.rjsinc.org/region6.html,* e-mail: rjsinc@rjsinc.org.

By World-Wide-Web: Copies of this program announcement and many of the required forms may also be obtained electronically at the ANA World Wide Web Page: *http://www.acf.dhhs.gov/programs/ana.*

The printed **Federal Register** notice is the only official program announcement. Although reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

DATES: The closing date for submission of applications is March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Ryan, Native American Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, telephone: (202) 401–7365 or (202) 690–7776, telefax: (202) 690–7441, or e-mail: kryan@acf.dhhs.gov

Part I: Supplementary Information

A. Purpose and Availability of Funds

The purpose of this notice is to announce the availability of fiscal year 2000 financial assistance to eligible applicants for the purpose of assisting Native Americans in assuring the survival and continuing vitality of their languages. Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this

announcement. Approximately $2,000,000 in Fiscal Year 2000 has been allocated for category I and II grants. For Category I, Planning Grants (project length: 12 months), the funding level for a budget period of 12 months will be up to $50,000. For Category II, Design and/or Implementation Grants (project length: up to 36 months), the funding level for a budget period of 12 months will be up to $125,000. In accordance with current agency policies, ANA may fund additional highly ranked applications if additional funds become available prior to the next competition.

ANA continues a variety of requirements directed towards enforcing its policy that an eligible grant recipient may only have one active ANA grant awarded from a competitive area at any time. Therefore, while eligible applicants may compete for a Native American language grant in either of the two categories, an applicant may only submit one application and no applicant may receive more than one Native American language grant.

All applicants must clearly demonstrate a plan for an employee fringe benefit package which includes an employee retirement benefit plan of .05%. Applicants must also include within their program budgets adequate funding to allow two program personnel to travel and attend post-award grant management and administration training which is sponsored by ANA T/TA providers in their assigned geographical region.

New for fiscal year 2000, under the goals of Executive Order 13031 of October 19, 1996 on Tribally Controlled Colleges and Universities (TCU's), TCU's may now independently apply for an ANA Grant without impacting the eligibility of the Tribe to apply. Previously, only one application was accepted, either from the Tribe or the TCU. Now both the Tribe and the TCU may compete for and receive ANA grants at the same time, in the same program(s).

B. Background

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past 500 years. Consequently, the Native American languages Act (Title 1, Pub.L. 101–477) was enacted to address this decline.

This legislation invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declared that it is the policy of the United States to "preserve, protect and promote the rights and freedom of Native Americans to use, practice and develop Native American languages." While the Congress made a significant first step in passing this legislation in 1990, it served only as a declaration of policy. No program initiatives were proposed, nor any funds authorized to enact any significant programs in furtherance of this policy.

In 1992, Congressional testimony provided estimates that of the several hundred languages that once existed, about 150 are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken by the most elderly.

In response to this testimony, the Congress passed the Native American languages Act of 1992 (the Act), P.L. 102–524, to assist Native Americans in assuring the survival and continuing vitality of their languages. Passage of the Act was an important second step in attempting to ensure the survival and continuation of Native languages, as it provides the basic foundation upon which the tribal nations can rebuild their economic strength and rich cultural diversity.

While the Federal government recognizes that substantial loss of Native American languages over the past several hundred years, the nature and magnitude of the status of Native American languages will be better defined when eligible applicants under the Act have completed language assessments.

The Administration for Native Americans (ANA) believes that the responsibility for achieving self-sufficiency rests with the governing bodies of Indian Tribes, Alaska Native villages, and in the leadership of Native American groups. This belief supports the ANA principle that the local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs which support the community's long-range goals.

Therefore. since preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity, activities proposed under this program announcement will contribute to the social development of Native communities and significantly contribute to their efforts toward self-sufficiency.

The Administration for Native Americans recognizes that eligible applicants must have the opportunity to develop their own language plans, technical capabilities, and access to the necessary financial and technical resources in order to assess, plan, develop and implement programs to assure the survival and continuing vitality of their languages. ANA also recognizes that potential applicants may have specialized knowledge and capabilities to address specific language concerns at various levels. This program announcement reflects these special needs and circumstances.

C. ANA Program and Administrative Policies

Applicants must comply with the following programmatic policies:

- Funds will not be awarded for projects addressing dead languages. For purposes of this announcement, dead languages are those languages that are no longer spoken by any tribal member or community member.
- The Commissioner shall determine the repository for copies of products from Native American language grants funded under this program announcement. At the end of the project period, products or project models of Native American languages grants funded by this program announcement should be sent to the designated repository. Federally recognized Indian Tribes are not required to comply with this condition.

Applicants must comply with the following administrative policies:

- Current Native American language grantees whose grant project period extends beyond September 30, 2000, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the same program area. Current Native American language grantees with project periods beyond September 30, 2000, may not compete for additional Native American language grants.
- Applicants for Category I may propose 12- to 17-month projects; applicants for Category II may propose up to 36-month projects.
- Applicants must describe a locally-determined strategy to carry out a proposed project with fundable objectives and activities.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger Tribe, unless the application includes a tribal resolution which clearly demonstrates the Tribe's support of the

project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.

• If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under the Native American languages program both for the current competition and for the duration of the approved grant period, should the application be funded.

• ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.

• Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

• If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served.

• Organizations incorporating in American Samoa are cautioned that the Samoan government relies exclusively upon IRS determinations of non-profit status; therefore, articles of incorporation approved by the Samoan government do not establish non-profit status for these organizations for the purpose of eligibility for ANA funds.

• Grantees must provide at least 20 percent of the total approved cost of the project; *i.e.*, the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20% of the total $125,000 project cost).

As per 45 CFR Part 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where legislation or regulations authorize using specific types of funds for match; examples follow:

• Indian Child Welfare funds, through the Department of Interior;

• Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and

• Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

• If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

• A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

• Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000 (including in-kind contributions). Therefore, for the grants under this Native American language program, no match is required for grants to these insular areas.

D. Proposed Projects to be Funded

Category I—Planning Grants

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed and to establish community long-range goal(s) to ensure its survival. Project activities may include, but are not limited to:

• Data collection, compilation, organization and description of current language status through a "formal" method (*e.g.* work performed by a linguist, and/or a language survey conducted by community members) or an "informal" method (e.g. a community consensus of the language status based on elders, tribal scholars, and/or other community members);

• Establishment of community long-range language goals; and

• Acquisition of necessary training and technical assistance to administer the project and achieve project goal(s).

Category II—Design and/or Implementation Grants

The purposes of Design and/or Implementation Grants are (1) So Tribes or communities may design and/or implement a language program to achieve their long-range goal(s); and (2) To accommodate where the Tribe or community is in reaching their long-term language goal(s).

Applicants under Category II must be able to document that:

(a) Language information has been collected and analyzed, and that it is current (compiled within 36 months prior to the grant application);

(b) The community has established long-range language goals; and

(c) Community representatives are adequately trained so that the proposed project goals can be achieved.

Category II applications may include purchasing specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

The types of projects ANA may fund under Category II include, but are not limited to:

1. Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilitate and encourage the teaching of Native American languages skills from one generation to another;

2. Establishment of a project to train Native Americans to teach Native

American languages to others or to enable them to serve as interpreters or translators of such languages;

3. Development, printing, and dissemination of materials to be used for the teaching and enhancement of Native American languages;

4. Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and

5. Compilation, transcription and analysis of oral testimony to record and preserve Native American languages

Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians (The populations served may be located on these islands or on the continental United States);
- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. The populations served may be located on these islands or in the United States; and
- Tribally controlled community colleges, tribally controlled post-secondary vocational institutions; and,
- Colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.
- Non-profit Alaska Native community entities or tribal governing bodies (Indian Reorganization Act or traditional Councils) as recognized by the Bureau of Indian Affairs.

Further information on eligibility requirements is presented in Part I.C, ANA Program and Administrative Policy. Some important policies found in Part I are highlighted as follows:

Current ANA Native American language grantees whose grant project period ends on or before September 30, 2000 are eligible to apply for a grant award under this program announcement. The Project Period is noted in Block 9 of the "Financial Assistance Award" document. Applicants for new grants may not have a pending request to extend their existing grant beyond September 30, 2000.

Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State or Tribe in which the corporation or association is domiciled.

If the applicant, other than a Tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Alaska Natives, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. To establish compliance with the requirement in the regulations for a Board representative of the community applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) A prospective participant or beneficiary of the project to be funded; or (3) Have a cultural relationship with the community to be served. A list of board members with this information including tribal or Village affiliation is one of the most suitable approaches for demonstrating compliance with this requirement.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period.

Participating Organizations: If a tribal organization, or other eligible applicant, decides that the objective of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

F. Grantee Share of the Project

Grantees must provide at least 20 percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. Further information on this requirement is presented in Part I.C, ANA Program and Administrative Policy.

Applications originating from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95–134, as amended (78 U.S.C. 1469a) under which HHS waives any requirement for matching funds under $200,000. (including in-kind contributions). Therefore, for the ANA grants under these announced programs, no match is required for grants to these insular areas.

G. Review Criteria

The proposed project should address the purposes of the Native American languages stated and described in the section I.B, "Background" of this announcement.

The evaluation criteria below are closely inter-related. Points are awarded only to applications which respond to these criteria. Proposed projects will be reviewed on a competitive basis using the following separate sets of evaluation criteria; one set for planning grant applications, the other for design and/or implementation grant applications:

H. Planning Grants

(1) Current Status of Native American language(s) (15 points)

- The application fully describes the current status of Native American language(s) in the community. Since

obtaining this data may be part of the planning grant application being reviewed, applicants can meet this requirement by explaining their current language status and providing a detailed description of any circumstances or barriers which have prevented the collection of community language data. If documentation exists, describe it in terms of current language status.

(2) Goals and Available Resources (25 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

- How the specific Native American long-range community goal(s) relate to the proposed project; and
- How the goal(s) fit within the context of the current language status.

(b) The application explains how the community and the tribal government (where one exists) intends to achieve these goals. The type of community served will determine the type of documentation necessary to demonstrate participation. All Tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in their projects and include them in development of language goals and strategies and in evaluation of project outcomes. Ways to demonstrate community and tribal government support for the project include:

- A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning;
- Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolutions; and
- Minutes of community meetings, tribal presentations and discussion forums;

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, and not "letters of support".

- "Letters of support" merely express another organization's endorsement of a proposed project. Such support letters and related documentation do not indicate a binding commitment, do not establish the authenticity of other resources, and do not offer or bind specific resources to the project.
- "Letters of commitment" are binding and specify the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.
- Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Objectives, Approach and Activities (30 points)

The proposed objectives in the Objective Work Plan(s) relate to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve for the Tribe or community's language goals for the proposed project.

Each Objective Work Plan clearly describes:

- The tribal government's and community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How the results or outcomes relate to the community's long-range goals or the establishment of those goals;
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective; and
- What the next steps may be after the Planning project is completed.

(4) Organizational capabilities/ Qualifications (20 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well-defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and or by the individual designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.P='04'≤

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Identifies and explains each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability

and the relevance of these costs to the proposed project; and

• Requests funds which are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.

• Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan must be "qualified", i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.

• The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

• The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

II. Design and/or Implementation Grants

(1) Current Status of Native American Language(s) (10 points)

(a) The application fully describes the current status of the Native American language to be addressed; current status is defined as data compiled within the previous 48 months. The description of the current status minimally includes the following information:

• Number of speakers
• Age of speakers
• Gender of speakers
• Level(s) of fluency
• Number of first language speakers (Native language as the first language acquired)
• Number of second language speakers (Native language as the second language acquired)
• Where Native language is used (e.g. home, court system, religious ceremonies; church, media, school, governance and cultural activities)
• Source of data (formal and/or informal)
• Rate of language loss or gain

(b) the application fully describes existing community language or language training programs and projects, if any, in support of the Native American language to be addressed by the proposed project. Existing programs and projects may be formal (e.g., work by a linguist, and/or language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members).

The description should answer the following: has applicant had a community language or language training program within the last 48 months? (2) Within the last 10 years? If so, fully describe the program(s), and include the following:

• Program goals
• Number of program participants
• Number of speakers
• Age range of participants (e.g., 0–5, 6–10, 11–18, etc.)
• Number of language teachers
• Criteria used to acknowledge competency of language teachers
• Resources available to the applicant (e.g. valid grammars, dictionaries, and/or thographics or describe other suitable resources)
• Program achievements

If applicant has never had a language program, a detailed explanation of what barriers or circumstances prevented the establishment of a community language program should be included.

(2) Goals and Available Resources (20 points)

(a) The application describes the proposed project's long-range goals and strategies, including:

• How the specific Native American long-range community goal(s) relate to the proposed project; and
• How the goal(s) fit within the context of the current language status;
• A clearly delineated strategy to assist in assuring the survival and continued vitality of the Native American languages addressed in the community.

(b) The application explains how the community and the tribal government (where one exists) intends to achieve these goals. The type of community served will determine the type of documentation necessary to demonstrate participation. All Tribes and communities, however, must indicate in their application how they intend to involve elders and other community members in their projects and include them in development of language goals and strategies and in evaluation of project outcomes. Ways to demonstrate community and tribal government support for the project include:

• A resolution from Tribes or tribal organizations stating that community involvement has occurred in project planning;
• Community surveys and questionnaires, including those developed to determine the level of community support for tribal resolutions; and
• Minutes of community meetings, tribal presentations and discussion forums;

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters of commitment of resources, and not "letters of support".

• "Letters of support" merely express another organization's endorsement of a proposed project. Such support letters and related documentation do not indicate a binding commitment, do not establish the authenticity of other resources, and do not offer or bind specific resources to the project.

• "Letters of commitment" are binding and specify the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.

• Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

If the applicant proposes to enter into a partnership arrangement with a school, college or university, documentation of this commitment must be included in the application.

(3) Project Objectives, Approach and Activities (30 points)

The proposed objectives in the Objective Work Plan(s) relate to the goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve for the Tribe or community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed.

Each Objective Work Plan clearly describes:

• The tribal government's and community's active involvement in the continuing participation of Native American language speakers;

• Measurable or quantifiable results or outcomes;

• How they relate to the community's long-range goals or the establishment of those goals;

• How the project can be accomplished with the available or expected resources during the project period;

• How the main activities will be accomplished;

• Who specifically will conduct the activities under each objective; and

• How the project will be completed, become self-sustaining, or be financed by other than ANA funds at the end of the project period.

(4) Organizational capabilities/ Qualifications (15 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well-defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/ or by the individual designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the proposed activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are encouraged to give preference to Native Americans in hiring staff and contracting services under an approved ANA grant.

(5) Budget (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

• Identifies and explains each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Applicants from American Samoa, Guam, and the Northern Mariana Islands are not required to provide a 20% match for the non-Federal share since the level of funding available for the grants would not invoke a required match for grants to these insular areas. Therefore, applicants from these insular areas may not have points reduced for the lack of matching funds. They are, however, expected to coordinate and organize the delivery of any non-ANA resources they propose for the project, as are all ANA applicants.

• Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project.

• Requests funds which are appropriate and necessary for the scope of the proposed project.

• Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.

• Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

• The plan must be "qualified", *i.e.*, approved by the Internal Revenue Service to receive special tax-favored treatment.

• The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.

• The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.

• The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, *e.g.*, Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

(6) Evaluation, Sharing and Preservation Plans (15 points)

The application should include the following three plans:

(a) An "evaluation plan" with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (*e.g.*, an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(b) A "sharing plan" that identifies how the project's methodology, research data, outcomes or other products can be shared and modified for use by other Tribes or communities. If this is not feasible or culturally appropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and the continuing vitality of Native languages.

(c) A "plan to preserve project products" describes how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations.

I. Application Due Date

The closing date for submission of applications under this program announcement is March 17, 2000.

Special Note: The Administration for Native Americans advises all applicants that grant awards made under this announcement will have a September 30, 2000 project start date. Applicants should, therefore develop projects that begin no earlier than this date.

J. For Further Information Contact

Dr. Kenneth Ryan, Native American Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, Mail Stop HHH 348F, Washington, D.C. 20447, telephone: (202) 401–7365 or (202) 690–7776; telefax: 202–690–7441; e-mail: kryan@acf.dhhs.gov.

Part II: General Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

A. Definitions

- "Language preservation" is the maintenance of a language so that it will not decline into non-use.
- "Language vitality" is the active use of a language in a wide range of domains of human life.
- "Language replication" is the application of a language program model developed in one community to other linguistically similar communities.
- "Language survival" is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.
- A "multi-purpose community-based Native American organization" is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- A "multi-year project" is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- "Budget Period" is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- "Core administration" is funding for staff salaries for those functions that support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.
- "Real Property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- "Construction" is the term which specifies a project supported through a discretionary grant or cooperative agreement, to support the initial building of a facility.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other Tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.
- Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) Include the salaries of personnel, (2) Occupy space, and (3) Benefit from the organization's indirect costs.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Section H, "General Guidance to Applicants", below.

C. Multi-Year Projects

Only Category II "Design and/or Implementation" projects may be developed as multi-year projects, i.e. for up to three years. The information in this section is not applicable to Category I, planning projects.

A multi-year project is a project on a single theme that requires more than 12 to 17 months to complete. It affords the applicant an opportunity to develop and address more complex and in-depth strategies. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period. Initial awards, on a competitive basis, will be for a one-year budget period (up to 17 months), although project periods may be for three years.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within a two-to-three year project period, will be funded in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 CFR Part 100.

E. The Application Process

1. Application Submission by Mail

One signed original, and two copies, of the grant application, including all

attachments, must be mailed on or before the closing date to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002, Attention: Lois B. Hodge, ANA No. 93612–992.

2. Application Submission by Courier

Applications hand-carried by applicants, applicant couriers, or by overnight express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 am and 4 pm at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024, Attention: Lois B. Hodge, ANA No. 93612–992.

3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ACF. An incomplete application is one that is:
- Missing Form SF 424.
- Does not have a signature on Form SF 424.
- Does not include proof of non-profit status, if applicable.
- The application (Form 424) must be signed by an individual authorized (1) To act for the applicant Tribe or organization, and (2) To assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. Independent review panels consisting of reviewers familiar with American Indian Tribes and Native American communities and organizations, and Native American languages evaluate each application using the published criteria in this announcement.

As a result of the review, a normalized numerical score will be assigned to each application.

- Each Tribe, Native American organization, or other eligible applicant may compete for one grant award under this program announcement.
- The Administration for Native Americans will accept only one application for this program announcement from any one applicant. If an eligible applicant sends in two applications for this program announcement, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.
- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and requires this program announcement, and the availability of funds.
- Successful applicants are notified through an official Financial Assistance Award (FAA) document. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

Special Note: The Administration for Native Americans advises all applicants that grant awards made under this announcement will have a September 30, 2000 project start date. Applicants should, therefore develop projects that begin no earlier than this date.

F. The Review Process

1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and,
- The application is signed and submitted by the deadline; and,
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation and the project described is an allowable type. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

- ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.
- After the Commissioner has made decisions on all applications funded with fiscal year 2000 funds, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are initially excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement.
- Projects will not be ranked on the basis of general financial need.
- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.
- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community."
- Applicants must document the community's support for the proposed project and explain the role of the

community in the planning process and implementation of the proposed project. For Tribes, a current signed resolution from the governing body of the Tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members Tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

• Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

• An application should describe a clear relationship between the proposed project, language goals, and the community's long-range goals or plan.

• The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

• Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

• In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

• Applications which were not funded under a previous years closing date and for resubmission should make a reference to the changes, or reasons for not making changes, in their current ANA application which are based on ANA panel review comments.

2. Technical Guidance

• It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.

• Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

• For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

• The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

• If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

• For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of federally recognized Indian Tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other federally recognized Indian Tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.

• The Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

• Applicants proposing multi-year projects under Category II must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

• Applicants for multi-year projects under Category II must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

• The Administration for Native Americans will critically evaluate applications in which the acquisition equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more than one year and an acquisition cost of $5,000 or month per "unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and deemed not appropriate to the needs of the project by ANA.

• Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

3. Grant Administrative Guidance

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents and tabbing of the sections be provided.

• An application with an original signature and two additional copies are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.

• Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose up to a 17 month project period under Category I and up to a 36 month project period under Category II.

4. Projects or Activities That Generally Will Not Meet The Purposes of This Announcement

• Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions.

• Project goals which are not responsive to this program announcement.

• Proposals from consortia of Tribes that are not specific with regard to support from, and roles of, member Tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of Tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both tribal consortia and a Tribe who belongs to the consortia receives ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member Tribes.

• Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period. All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period. "Completed" means that the project ANA funded is finished, and the desired result(s) have been attained. "Self-sustaining" means that a project will continue without outside resources. "Supported by other than ANA funds" means that the project will continue beyond the ANA project period, but will be supported by funds other than ANA's.

• Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of $150,000 or 25 percent of the total direct costs approved for the entire budget period.

• Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, Tribe or village.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

I. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section E, The Application Process. The Administration for Native Americans cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ANA electronically will not be accepted regardless of date or time of submission and time of receipt. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

Applications and related materials postmarked after the closing date will be classified as late.

1. Deadlines

• Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to:

U. S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, SW, Mail Stop HHH 326–F, Washington, DC 20447–0002 Attention: Lois B. Hodge ANA No. 93612–992

• Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

• Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date or postmarked on or before the deadline date, Monday through Friday (excluding Federal holidays), between the hours of 8:00 am and 4:30 pm at: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

• ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

• No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

2. Late applications

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. Extension of deadlines

The Administration for Children and Families may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is a widespread disruption of the mails. A determination to extend or waive deadline requirements rests with the Chief Grants Management Officer.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; and 93.587 Promoting the Survival and Continuing Vitality of Native American languages)

Dated: January 20, 2000.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 00–2602 Filed 2–4–00; 8:45 am]

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Federal Register

Monday,
February 7, 2000

Part V

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9903
Cost Accounting Standards Board; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage; Final Rule

OFFICE OF MANAGEMENT AND BUDGET

OFFICE OF FEDERAL PROCUREMENT POLICY

48 CFR Part 9903

Cost Accounting Standards Board; Applicability, Thresholds and Waiver of Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Interim Rule.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, is revising applicability, thresholds and procedures for the application of the Cost Accounting Standards (CAS) to negotiated government contracts. This rulemaking is authorized pursuant to Section 26 of the Office of Federal Procurement Policy Act, 41 U.S.C. 422. The Board is taking action on this topic in order to adjust CAS applicability requirements and dollar thresholds in accordance with the provisions of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65.

DATES: The effective date of this interim rule is April 2, 2000. Comments on the rule must be submitted in writing, by letter, and must be received by April 7, 2000.

ADDRESSES: Comments should be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, Room 9013, Washington, DC 20503. Attn: CASB Docket 00–01. The submission of public comments via the Internet by "E-mail" will not satisfy the specified requirement that public comments must be submitted in writing, by letter, as receipt of a readable data file cannot be assured.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

SUPPLEMENTARY INFORMATION

A. Regulatory Process

The CAS Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Normally, the CAS Board follows a statutorily prescribed "four-step" rulemaking process prior to the issuance of a final rule (see 41 U.S.C. § 422(g)). However, the Board is proceeding to issue this interim rule in light of recent statutory changes to its enabling statute. The Board welcomes public comment on these changes, and will consider any comments received prior to promulgation of a final rule.

B. Background

On October 5, 1999, the President signed into law the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106–65. Sec. 802 of that Act, entitled "Streamlined Applicability of Cost Accounting Standards," makes certain changes in the applicability requirements for CAS coverage. This interim rule is designed to reflect these changes in the CAS Board's rules.

Summary of Amendments

"Trigger contract": 48 CFR 9903.201–1(b) is amended by adding a new subparagraph (7) that exempts contracts and subcontracts from CAS coverage, provided that the business unit of the contractor or subcontractor has not received a single CAS-covered contract or subcontract of $7.5 million or more.

"Firm-fixed price contract exemption": The Board is implementing this statutory exemption by amending 48 CFR 9903.201–1(b) to revise subparagraph (15) to exempt from CAS coverage, firm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data. The Board is using the term "cost or pricing data" rather than "certified" cost or pricing data in order to conform to the statutory requirements of 10 U.S.C. § 2306(h)(1) and 41 U.S.C. § 254(b), which defines "Cost or pricing data" as data that requires certification.

"Types of CAS coverage": 48 CFR 9903.201–2(a) is amended by revising the dollar threshold for "full CAS coverage" from $25 million to $50 million, and deleting the requirement that to be subject to "full CAS coverage", that a contractor or subcontractor have received at least one contract or subcontract that exceeded $1 million (the previous "trigger contract" amount for initiation of "full CAS coverage"). 48 CFR 9903.201–2(b) is amended by revising the definition of "modified CAS coverage" to indicate that such coverage applies to covered contracts and subcontracts where the total value of CAS-covered contracts and subcontracts received by a business unit is less than $50 million. Conforming amendments have also been made to the solicitation provisions and contract clauses appearing at 9903.201–3 and 9903.201–4, respectively.

"Waiver": 48 CFR 9903.201–5 is amended by revising this section to provide for agency CAS waiver authority under certain circumstances.

"Disclosure requirements": 48 CFR 9903.202–1(b) is amended by revising the dollar amount for disclosure from $25 million to $50 million, and deleting the requirement that a contractor or subcontractor have received at least one contract in excess of $1 million.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. § 3501, *et seq.* The purpose of this rule is to implement Pub. L. 105–65.

D. Executive Order 12866 and the Regulatory Flexibility Act

This rule serves to eliminate certain administrative requirements associated with the administration of the Cost Accounting Standards by covered government contractors and subcontractors. The economic impact on contractors and subcontractors is therefore expected to be minor. As a result, the Board has determined that this is not a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis is not required. Furthermore, this rule will not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the amendments contained in this interim rule. All comments must be in writing and submitted timely to the address indicated in the **ADDRESSES** section of this document.

List of Subjects in 48 CFR Part 9903

Cost Accounting Standards, Government Procurement.

Nelson F. Gibbs,

Executive Director, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for part 9903 of chapter 99 of title 48 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

PART 9903—CONTRACT COVERAGE

Subpart 9903.2—CAS Program Requirements

9903.201 Contract requirements.

2. Section 9903.201–1 is amended by adding paragraph (b)(7) and revising paragraph (b)(15) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

* * * * *

(7) Contracts or subcontracts of less than $7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at $7.5 million or greater.

* * * * *

(15) Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data.

3. Section 9903.201–2 is amended by revising paragraphs (a)(1) and (2) and (b)(1) and (2) to read as follows:

9903.201–2 Types of CAS coverage.

(a) * * *

(1) Receive a single CAS-covered contract award of $50 million or more; or

(2) Received $50 million or more in net CAS-covered awards during its preceding cost accounting period.

(b) *Modified coverage.* (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than $50 million awarded to a business unit that received less than $50 million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of $50 million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

* * * * *

4. Section 9903.201–3 is amended by revising the clause heading; by revising paragraph (c)(3) in Part I of the clause; by revising the CAUTION paragraph following paragraph (c)(4) in Part I; and by revising Part II of the clause, to read as follows:

9903.201–3 Solicitation provisions.

* * * * *

Cost Accounting Standards Notices and Certification (April 2000)

* * * * *

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

* * * * *

(c) * * *

(3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) * * *

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $50 million or more.

* * * * *

5. Section 9903.201–4 is amended by revising paragraph (c)(1) to read as follows:

9903.201–4 Contract clauses.

* * * * *

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000 but less than $50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

* * * * *

6. Section 9903.201–5 is revised to read as follows:

9903.201–5 Waiver

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than $15 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work—

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this chapter.

(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policymaking level in the agency.

(d) The head of each executive agency shall report the waivers granted under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201–4(a), Cost Accounting Standards, or 9903.201–4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain—

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

7. Section 9903.202–1 is amended by revising paragraphs (b) (1) and (2) to read as follows:

9903.202–1 General requirements.

* * * * *

(b) * * *

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of $50 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling $50 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

* * * * *

[FR Doc. 00–2621 Filed 2–4–00; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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*80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
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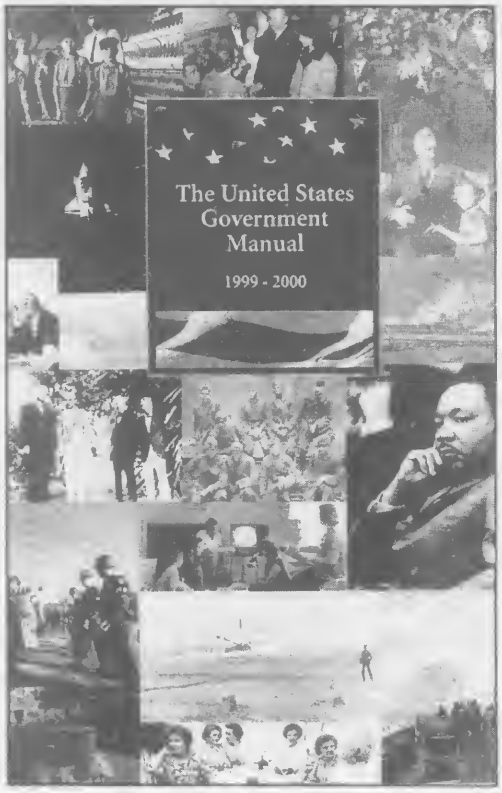

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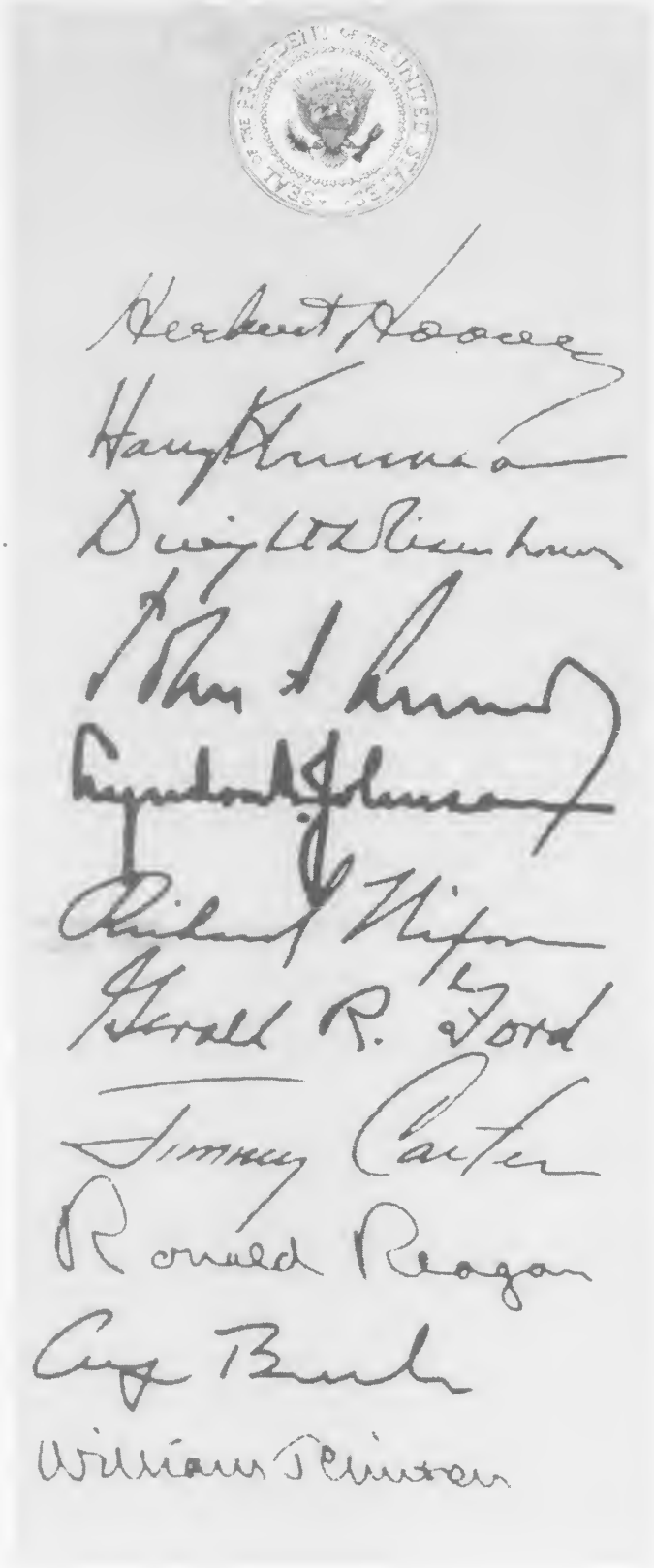

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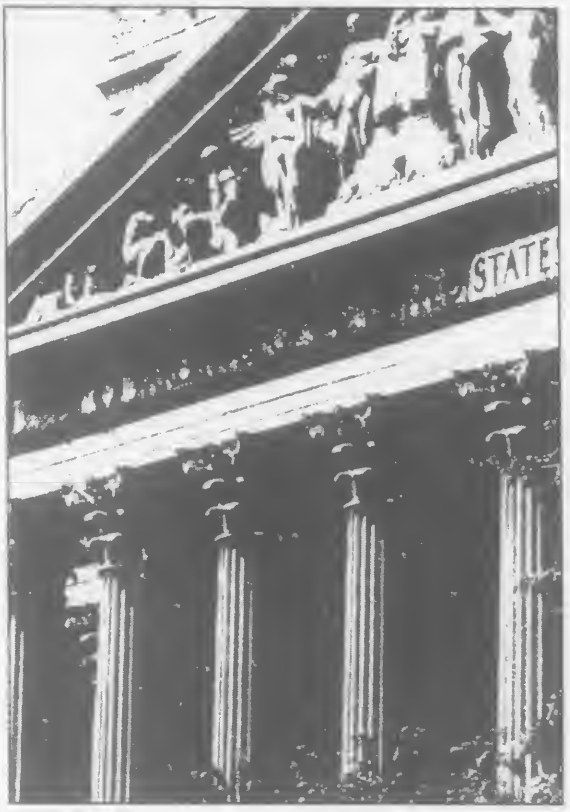

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