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GENERAL ACCOUNTING OFFICE

4 CFR Chapter I

Claims, Waiver of Claims and Transportation Issues

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: The General Accounting Office (GAO) is removing regulations which relate to the settlement of claims, settlement of accounts of deceased and incompetent individuals, transportation transactions, and waiver of claims for erroneous payments. The Legislative Branch Appropriations Act of 1996 transferred these functions to the executive branch, but these regulations were kept for a transition period. This final rule eliminates these regulations as unnecessary because the functions are no longer carried out by GAO but have been transferred to other federal agencies.

DATES: Effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Barry L. Shillito, 202–512–4663; shillitob.ogc@gao.gov.

SUPPLEMENTARY INFORMATION:

Claims Settlements Authority

In Subchapter C (Claims; General), Parts 30–36 set out the Comptroller General's regulations for the settlement of (1) claims and (2) accounts of certain deceased and incompetent individuals. The Legislative Branch Appropriations Act of 1996, Public Law 104–53, sec. 211(a), 109 Stat. 514, 535 (1996), transferred certain of the Comptroller General's authority to settle claims and accounts to the Director of the Office of Management and Budget (OMB), and provided for the Director of OMB to delegate this authority to other appropriate agencies. The Director of OMB delegated his authority to several executive branch agencies. Subsequently, the General Accounting Office Act of 1996, Public Law 104–316, 110 Stat. 3826 (1996), set out in detail, among other things, the authority given to the Director of OMB and other heads of agencies to settle the claims and accounts formerly subject to settlement by the Comptroller General. Section 202(n) of the GAO Act of 1996 made a conforming amendment to 31 U.S.C. 732 to set out the executive branch agencies to whom the Director of OMB delegated the authority to settle claims formerly within the authority of the Comptroller General. Additionally, section 103(c) of the GAO Act of 1996 transferred the Comptroller General's authority to promulgate regulations with respect to the designation of beneficiaries for certain deceased and incompetent persons to various specified officials in the three branches of government.

The Director of OMB delegated to the Director of the Office of Personnel Management (OPM) the authority to settle claims against the United States involving Federal employee compensation and leave, deceased employees' compensation, and proceeds of canceled checks payable to deceased beneficiaries. Individuals with these types of claims should no longer contact GAO but should contact OPM.

The Director of OMB delegated to the Administrator of General Services the authority to settle claims involving expenses incurred by Federal civilian employees for official travel and transportation and for relocation expenses incident to transfers of official duty station. Individuals with these type of claims should no longer contact GAO but should contact the General Services Administration.

OMB delegated to the Secretary of Defense the authority to settle claims for military pay, allowances, travel, transportation, retired pay, and survivor benefits as well as claims by transportation carriers involving amounts collected from them for loss or damage incurred to property incident to shipment at Government expense. Individuals with these types of claims should no longer contact GAO but should contact the Department of Defense.

Accordingly, the Comptroller General no longer has the authority to prescribe the regulations in 4 CFR parts 30–32, regarding claims settlement, and parts 33–36, regarding settlement of accounts for certain deceased and incompetent persons.

Transportation

Sections 125 and 127(d) of the GAO Act of 1996, transferred the Comptroller General's authority to promulgate regulations for transportation transactions for use of U.S. flag carriers pursuant to the Merchant Marine Act of 1936, 46 U.S.C. 1241a, and the Fly America Act, 49 U.S.C. 40118(c), to the Administrator of General Services. Accordingly, the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 52. With the removal of part 52, there is no further need for 4 CFR part 51.

Section 202(o)(2) of the GAO Act of 1996 transferred the Comptroller General's authority to promulgate regulations governing the review of GSA transportation settlement actions pursuant to 31 U.S.C. 3726(g)(1) to the Administrator of General Services. Accordingly the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 53.

Section 202(o)(1) of the GAO Act of 1996, 110 Stat. 3826, 3844 (1996), removed the Comptroller General's authority to jointly prescribe standards, with the Secretary of Treasury, for advance payment of charges for transportation services pursuant to 31 U.S.C. 3726(f). Accordingly, the Comptroller General no longer has authority to prescribe the regulations found at 4 CFR part 56.

Given the above discussion, there is no long current need for a subchapter devoted to transportation (Subchapter D).

Waiver

Sections 103 of the GAO Act of 1996 transferred the Comptroller General's authority to waive claims against civilian employees arising out of erroneous payments of pay and allowances, travel, transportation and relocation benefits to the head of an agency with respect to a legislative branch employee, or to the Director of OMB with respect to any other agency or employee. Further, the Comptroller General's authority over such claims against members of the military and the National Guard was transferred to the Director of OMB by sections 105(b) and 116 of the GAO Act of 1996. The Director of OMB has delegated his authority to the head of the agency that

made the erroneous payment. Accordingly the Comptroller General no longer has authority to promulgate the regulations at 4 CFR parts 91 and 92 (Subchapter G—Standards for waiver of claims for erroneous payments of pay and allowances, and of travel, transportation, and relocation expenses and allowances). Individuals seeking a waiver should no longer contact GAO but should direct a request for waiver to their employing agency.

Accordingly, as set forth in the preamble and under the authority of Public Law 104–53, sec. 211(a), 109 Stat. 535, and secs. 103(c), 103(d), 105(b), 116, 125, and 127 of Public Law 104–316, 110 Stat. 3826, GAO amends 4 CFR Chapter I as follows:

1. Subchapter C, consisting of parts 30 through 36, Subchapter D, consisting of parts 51 through 53 and part 56, and Subchapter G, consisting of parts 91 through 93, are removed and reserved.

Dated: May 19, 2000.

Robert P. Murphy,

General Counsel, General Accounting Office.

[FR Doc. 00–13192 Filed 5–24–00; 8:45 am]

BILLING CODE 1610–02–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

RIN 3206–A158

Employment in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations governing career and limited appointments to the Senior Executive Services (SES). The amended regulations emphasize the importance of executive leadership qualifications in agency SES selection criteria, strengthen merit principles, and increase SES staffing flexibilities to help agencies recruit the brightest and most diverse executive cadre possible.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Daliza Salas (202–606–1274, email desalas@opm.gov) or Marcia Staten (202–606–1832, email mkstaten@opm.gov).

SUPPLEMENTARY INFORMATION: The success of the Senior Executive Service (SES) rests on the ability of agencies to employ highly competent, motivated, and diverse professionals dedicated to public service who have the requisite leadership expertise to meet the challenges facing the Government and the Nation now and into the future.

The final regulations and accompanying guidance to agencies are an outcome of extensive discussions with stakeholders about improving the SES. These discussions challenged stakeholders to think about the future and whether the way we develop, select, and manage the SES cadre produces the kind of executives the Government needs to meet the leadership challenges of the 21st century. Although stakeholder views varied widely, there was consensus on many ideas, including increasing agency flexibilities for SES staffing. Specifically, there was general support for improving the SES selection process to ensure that leadership and executive qualifications are the major selection criteria, reducing the paperwork burden on applicants and agencies, considering options for delegating QRB administration, and increasing agency authority to make limited terms appointments.

On July 30, 1999, OPM published a proposed rule in the **Federal Register** (64 CFR 41334) to amend the regulations governing career and limited appointments to the Senior Executive Service (SES) and Qualifications Review Board (QRB) certification. We received 24 written comments during the comment period: 16 from departments and agencies, 4 from professional organizations, and 4 from individuals. There was broad support for the changes, although some respondents had serious reservations about the proposal to delegate QRB administration to individual agencies via delegation agreement.

In addition to these regulatory changes, we have modified internal procedures and other requirements to streamline the SES application process, reduce paperwork requirements, and improve the QRB certification process. These modifications provide alternative methods for documenting executive qualifications for presentation to QRBs and improved guidance and instructions to QRBs to ensure that members fully understand their role and responsibilities. We have also suggested ways for agencies to improve their recruitment and selection procedures. OPM's administrative modifications and the suggested changes at the agency level will help agencies and candidates focus on substance rather than process and format, and they reinforce the goal of achieving a highly-qualified, diverse SES corps. We have summarized these procedural modifications and flexibilities in supplemental guidance to agencies.

Emphasis on Executive Leadership

The key characteristic of an SES position is executive leadership, and therefore selection criteria should focus primarily on leadership qualifications. Further, the law at 5 U.S.C. 3393 requires agency Executive Resources Boards to conduct the merit staffing process for career entry into the SES, including reviewing the executive qualifications of each career SES candidate.

During discussions on improving the SES, stakeholders confirmed that, in many agencies, the selection criteria focuses mainly on candidates' professional or technical qualifications, and therefore consideration of executive qualifications is not getting the full attention intended by the SES legislation. To strengthen that focus and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes, the proposed regulations amended the current provisions to incorporate the statutory requirements.

Most commenters supported the proposal. One agency felt there was not pressing need to revise the current wording, as what constitutes SES qualifications changes over time with new studies and emerging approaches and theories. We do not agree, given that the statute requires selection based on executive qualifications and our findings that many agencies are not considering executive expertise in their SES selections. An August 1999 survey of SES members reinforces these findings. Only 56 percent of the senior executives responding to the survey said that their agencies strongly emphasize executive qualifications in evaluating applications and use them as key factor in determining who is selected for the SES. Further, our research tells us that the emphasis on executive skills and expertise is even more critical than in the past and will continue to be of primary importance in the future. The survey findings supported this as well. When asked to rank qualifications for SES positions now and in five years, respondents rated executive qualifications as more important than technical qualifications today and even more important in five years.

One agency, while not opposing the proposal, was concerned that it might lead to overly prescriptive procedural requirements. This is not our intent. Agencies will continue to have the latitude to design merit staffing processes to meet their unique mission requirements, within the framework of

law and regulations, including determining how to ensure that SES selections are based on consideration of executive qualifications.

One agency objected to the requirement that the appointing authority certify the candidate's executive and technical qualifications. The certification requirement is not new—it is included in current regulations at § 317.502(b). The same agency recommended adding a statement that the appointing authority can approve the appointment of a candidate who does not meet the executive qualifications but has special or unique qualities that indicate a likelihood of executive success. Selection of a candidate on this basis is already provided in statute (5 U.S.C. 3393(c)(2)) and current regulations (§ 317.502(c)).

Two professional organizations recommended that we require equal consideration of executive and technical qualifications to ensure that technical qualifications are not favored over executive qualifications. Since the statute does not make this specification, we have not adopted the recommendation. Further, "equal consideration" would indicate that technical qualifications should carry the same weight in SES selections, which is not the case. Executive qualifications should be the primary factor. The final regulations concerning executive qualifications are adopted as proposed in order to reinforce the primacy of executive expertise and encourage agencies to fully integrate consideration of executive leadership qualifications into their selection processes.

Three professional organizations recommended additional language to emphasize that recruitment and selection for initial SES career appointments should be achieved from the brightest and most diverse executive cadre possible. We have added language to the final regulations that stresses the importance of reaching out to women, minorities, and people with disabilities in SES recruitment and selection. We have also addressed this in the supplemental guidance to agencies on the staffing flexibilities and procedural modifications.

Delegating QRB Administration

During stakeholder discussions on improving the SES, several agencies recommended delegating QRB administration to agencies to give them more flexibility to manage their executive resources. Some were critical of the paperwork and procedures connected with QRB certification and felt that agencies could make process improvements if the authority were delegated. OPM agreed to consider the recommendation, incorporated it into the proposed regulations, and formally asked for stakeholder views. The proposed regulatory changes provided for delegation of QRB administration to agencies, on an agency-by-agency basis via individual delegation agreements, provided that the focus on leadership and executive expertise would be maintained and merit system principles would be preserved.

Two-thirds of those commenting on the proposal either supported or voiced no objections to the proposal. However, very few indicated an interest in pursuing a delegation agreement. Supporters favored the increased flexibility to manage and be held accountable for the SES appointment process. Another commented that agencies have long records of merit-based selections of individuals with well-demonstrated SES qualifications.

A few supporters had some reservations. One stated that delegation might create undue pressure on QRB members to certify candidates. Another commented that fairness might be jeopardized under delegation and politicization heightened. A third commenter said that more benefit could be obtained through streamlining paperwork requirements than through QRB delegation.

One agency, three professional organizations, and four individuals strongly opposed the proposal. Key reasons given were serious concerns about the ability of agencies to guarantee an independent peer review, the potential for abuse of the merit staffing process and politicization of the career SES, and the possible adverse impact on efforts to increase the diversity of the SES cadre. In addition, one professional organization questioned OPM's authority to delegate QRB administration. Regarding this issue, we have determined that OPM's broad statutory authority at 5 U.S.C. 1104 for delegating personnel management functions permits the delegation of QRB administration.

Although more respondents supported the proposal than opposed it, the arguments against delegation were substantive and persuasive. The concerns about preserving the independence of QRB certification and the perceived potential for politicization of the career appointment process expressed by those opposed to the proposal outweighed comments in favor of delegation. Since the supporters did not offer compelling reasons for proceeding with the proposal, the final regulations do not include the proposed amendment to § 317.502 regarding QRB delegation.

We will strengthen efforts to encourage senior executives from diverse backgrounds to serve as QRB members to ensure that the boards are representative of the Nation's diversity. In addition, we have modified the procedures and streamlined paperwork associated with QRB administration to address concerns that the process focuses on paper over substance and to provide more specific and detailed feedback to agencies on QRB disapprovals.

Noncareer Conversion Restriction

The current regulation at § 317.502(e) precludes QRB certification of a noncareer SES employee for career appointment in the employee's current position or a successor to that position, because there is no bona-fide vacancy for which to hold competition. This regulation was intended to preserve the merit principle of fair and open competition in merit selections. Since the regulation was promulgated, however, questions have arisen about the definition of "noncareer SES employee." The proposed regulation strengthens and clarifies the intent of the current regulation by expanding coverage to noncareer-type employees, including noncareer SES appointees and Schedule C appointees, or the equivalent. This generally refers to individuals in or from positions of a confidential, policy-determining, or policy-advocating nature.

Commenters concurred with the proposed revision. One agency recommended adding certain limited appointees to those considered to be noncareer-type employees. These would be limited appointees not appointed under an agency's delegated authority at § 317.601(c)(1), which restricts use of the authority to individuals with career or career-conditional appointments. Since limited appointees, regardless of the method of appointment, are not considered noncareer-type employees within the meaning intended by this provision, we are not adopting the recommendation.

One agency recommended that we delete "or equivalent" and restrict coverage to noncareer SES and Schedule C appointees only. We believe the additional language is needed to cover other categories that might meet the intent of the provision, so we have not adopted this recommendation. The final regulations are adopted as proposed.

SES Probationary Period

The proposal made two changes to the regulations governing the SES

probationary period. One would require agencies to assess the performance of new career appointees before the end of the probationary period and make an official determination that the appointee is performing at the level of excellence expected of a senior executive. The second change would require that, during the probationary period, agencies address the executive development activities outlined in development plans used to support QRB certification based on special and unique qualifications. Both requirements were an outcome of stakeholder discussions about making more effective use of the probationary period. Stakeholders had serious concerns about the lack of attention paid to performance during probation. They also felt that, when a QRB certifies candidates on the basis of special and unique qualifications, stronger oversight is needed to verify that the executive development activities promised by the agency are accomplished.

There was overall support for the proposals. One agency, while supporting the concepts, opposed placing the provisions in regulation. The agency felt that agencies should be trusted to manage their own executive resources effectively under their own administrative authority. Another supported the concepts, but said that the means should be left to each agency. Another agency opposed the provision, stating that performance issues can be addressed through the performance management system. While these views have merit, most stakeholders indicated that something more is needed to reinforce the importance of paying attention to performance during probation.

One professional organization recommended requiring training in succession planning and diversity leadership during probation. These are important issues, and we are using other venues to bring their importance to that attention of agency leadership and human resources directors. The training needs of individual appointees vary widely. While some may need training in succession planning or diversity leadership, there are other equally critical areas where training might be necessary, such as managing information technology or measuring business results. Agencies should have the flexibility to assess these needs and determine how to address them.

Two agencies recommended that the appointing authority be allowed to delegate the certification responsibility, and we agree. The final regulations provide that the appointing authority, or his or her designee, must certify that the appointee performed at the level of excellence expected of a senior executive during the probationary period.

Pool of Limited Appointment Authorities

The proposed regulations would increase the pool of limited appointment authorities currently available to agencies from 2 percent to 3 percent of their total SES allocation. Use of this pool authority is restricted to appointments of individuals with career or career-type appointments outside the SES.

Most commenters supported this provision. One agency recommended that the pool be increased to 5 percent. One professional organization opposed the provision, stating that it would encourage and facilitate more temporary SES appointments and would jeopardize OPM's traditional oversight role. However, Congress intended that a number of appointments in the SES be temporary, and set a maximum of 5 percent of the Governmentwide SES allocation to prevent excessive use of the authority. Since the SES was established in 1978, no more than 2.5 percent have been limited appointees, well within the congressional limit. Increasing the agency pool authority by 1 percent gives agencies some additional flexibility, while giving OPM enough reserves to address other limited appointment needs that cannot be met with the agencies' delegated authority. The final rule adopts the amendment as proposed.

In exercising this delegated authority, agencies must continue to comply with all other statutory and regulatory provisions affecting limited appointments, *e.g.*, that an appointment be made only to a general position; that the appointee meet the qualifications required for the position; and that the appointment is to a non-continuing, project-type position. OPM will continue to monitor use of this appointment authority to ensure compliance with the statutory 5 percent limit on SES limited appointments Governmentwide and that appointments are being made in accordance with statutory and regulatory requirements.

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 317

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR Part 317 as follows:

PART 317—EMPLOYMENT IN THE SENIOR EXECUTIVE SERVICE

1. The authority citation for part 317 continues to read as follows:

Authority: 5 U.S.C. 3392, 3393, 3393a, 3395, 3397, 3593 and 3596.

Subpart E—Career Appointments

2. Amend § 317.501 by revising the section heading, the first sentence of paragraph (c)(2), and paragraph (c)(6), to read as follows:

§ 317.501 Recruitment and selection for initial SEC career appointment be achieved from the brightest and most diverse pool possible.

* * * * *

(c) * * *

(2) Provide that the ERB consider the executive and technical qualifications of each candidate, other than those found ineligible because they do not meet the requirements of the vacancy announcement. * * *

* * * * *

(6) Provide that the appointing authority select from among the candidates identified as best qualified by the ERB and certify the candidate's executive and technical qualifications.

* * * * *

3. Amend § 317.502 by revising paragraph (e) to read as follows:

§ 317.502 Qualifications Review Board certification.

* * * * *

(e) An action to convert a "noncareer-type" employee to a career SES appointment in the employee's current position or a successor to that position will not be forwarded to a QRB. A "noncareer-type" employee includes a noncareer SES appointee, a Schedule C appointee, or equivalent.

* * * * *

4. Amend § 317.403 by revising paragraph (a); redesignating paragraphs (b) through (f) as paragraphs (c) through (g), respectively; adding a new paragraph (b); and revising the last sentence in newly redesignated paragraph (f) to read as follows:

§ 317.503 Probationary period.

(a) An individual's initial appointment as an SES career appointee

becomes final only after the individual has served a 1-year probationary period as a career appointee; there has been an assessment of the appointee's performance during the probationary period; and the appointing authority, or his or her designee, has certified that the appointee performed at the level of excellence expected of a senior executive during the probationary period.

(b) When a career appointee's executive qualification have been certified by a Qualifications Review Board on the basis of special or unique qualities, as described in § 317.502(c), the probationary assessment must address any executive development activities the agency identified in support of the request for QRB certification.

* * * * *

(f) * * * The individual, however, need not be recertified by a QRB unless the individual was removed for performance or disciplinary reasons.

* * * * *

5. In Subpart F, the heading for the subpart is revised to read as follows:

Subpart F—Noncareer and Limited Appointments

6. Amend § 317.601, paragraph (c)(1), by revising the first sentence to read as follows:

§ 317.601 Authorization.

* * * * *

(c) * * *

(1) Agencies are provided a pool of limited appointment authorities equal to 3 percent of their Senior Executive Service (SES) position allocation, or one authority, whichever is greater. * * *

[FR Doc. 00–13053 Filed 5–24–00; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. 99–064–2]

Noxious Weeds; Update of Weed and Seed Lists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the noxious weeds regulations by adding *Homeria* spp. (cape tulips) to the list of terrestrial weeds. Listed noxious weeds may be moved into or through the United States or interstate only under a written permit and under conditions that would not involve a danger of dissemination of the weeds. This action is necessary to prevent the artificial spread of noxious weeds into noninfested areas of the United States.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weed regulations were promulgated under authority of the Federal Noxious Weed Act (FNWA) of 1974, as amended (7 U.S.C. 2801 *et seq.*), and are set forth in 7 CFR part 360. They contain restrictions on the movement of listed noxious weeds into or through the United States and interstate.

Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS) regulations implementing the provisions of title III of the FSA are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

On December 27, 1999, we published in the **Federal Register** (64 FR 72293–72296, Docket No. 99–064–1) a proposal to amend the noxious weed regulations by adding Homeria spp. (cape tulips) to the list of terrestrial noxious weeds in § 360.200(c) and to the list of seeds with no tolerances applicable to their introduction in § 361.6(a)(1).

We held a public hearing on the proposed rule on February 1, 2000. No one came to speak about the proposed rule. We also solicited comments concerning our proposal for 60 days ending February 25, 2000. We received one comment by that date. The comment was from a representative of a foreign government. We carefully considered the comment, and have discussed its concerns below.

Comment: APHIS should conduct its own comprehensive review to assess the number of *Homeria* spp. already present in the United States and their distribution, by species.

Response: As stated in our proposed rule, APHIS has been unable to determine the number and distribution of *Homeria* spp. in the United States. Based on information available from literature and known herbarium collections, there are no known established, feral populations of *Homeria* spp. in the United States. In our proposed rule, we asked the public to provide us with information on what species of *Homeria* are being planted and where. Due to the limited resources available to fund monitoring and survey programs in regard to noxious weeds, we are unable to conduct additional reviews specific to *Homeria* spp. We will continue to monitor and conduct surveys at current levels, and as resources permit. If, in the future, we are able to determine that certain species of the genus *Homeria* have become widespread, then we will consider removing those particular species from the list of noxious weeds at that time.

Comment: APHIS should assess the potential for *Homeria* spp. to set seeds under the U.S. cultural practices and the potential for *Homeria* spp. to become established as weeds in agricultural areas of the United States.

Response: APHIS has no reason to doubt that most species of *Homeria* will set seed in the United States. Using a simulation model for predicting the effects of climate on the distribution of plants, we matched locations of infestations of *Homeria* spp. in Australia to locations with similar climate in the United States. Based on the results of the simulation, we have reason to believe that *Homeria* spp. presents a significant risk of becoming established as a weed in certain areas of the United States, especially along the west coast and in Texas.

Prolific seed production is only one indicator of high dispersal or spread potential. At least one species of the genus *Homeria, H. miniata*, does not produce viable seeds, but produces cormils in each leaf axil and around the developing corm at the base of the plant. The cormils may remain dormant and build up in established patches, serving as effective dispersal agents. If APHIS determines in the future that certain species of the genus *Homeria* do not produce seed or cormils, we will consider relieving restrictions on the importation of those species.

Comment: *Homeria* spp. may not present the same degree of risk in the United States as they have in South Africa and Australia, due probably to unique pasture and animal husbandry situations in these countries. APHIS could investigate whether *Homeria* spp. would cause any economic losses in U.S. pastures, particularly taking into account the pasture management and animal husbandry systems being used in the country.

Response: Again, APHIS has determined that several areas of the United States provide ideal climate conditions for the establishment of *Homeria* spp. As stated in our proposed rule, we believe there is a significant risk associated with the importation of seeds of *Homeria* spp. as contaminants of shipments of Australian oats or other varieties of seeds. We believe that such shipments provide a direct path for establishment of *Homeria* spp. in U.S. pastures, which could result in the poisoning of livestock, reduction of carrying capacity, and substantial losses for U.S. farmers.

Further, our review of the scientific literature has revealed that species of the genus *Homeria* have escaped from garden plantings in Australia and New Zealand into surrounding areas. According to the literature, dispersal occurs by the movement of corms and seeds, aided by humans, animals, wind, and water. When plants dry out at the end of the growing season, they may break off at the soil level, with seed heads attached. The dry plants then may blow around the ground surface, scattering seeds.

In the absence of any data regarding imported species of the genus *Homeria* that have become widely distributed in the United States or imported species that do not produce cormils or seeds, and for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set forth below, regarding the economic effects of this rule on small entities.

In accordance with the FNWA, the Secretary of Agriculture is authorized to promulgate regulations to prevent the movement of any noxious weed into the United States, or interstate, except under conditions prescribed by the Secretary.

This rule will add *Homeria* spp. (cape tulips) to the list of Federal noxious weeds and to the list of seeds with no tolerances applicable to their introduction.

Homeria spp. (cape tulips) are not known to exist in the United States in the wild. However, *Homeria* spp. have been imported into the United States under the Bulb Preclearance Program since 1994, with increasing numbers of imports each year. We estimate that over 1.8 million corms of *Homeria* spp. were received in the United States between July 1994 and March 1999. However, data on the distribution of *Homeria* spp. are not available. Persons who import or purchase *Homeria* spp., including those in the nursery trade, could be affected by this rule. However, data on the number and location of persons who import or purchase *Homeria* spp. are not available.

As stated above, *Homeria* spp. nursery stock has been imported into the United States for several years without restriction. Recently, APHIS inspectors found seeds of *Homeria* spp. in shipments of Australian oats to the United States. As a result of this finding, APHIS conducted a risk assessment to determine the potential effects of *Homeria* spp. on U.S. agriculture. The risk assessment revealed that *Homeria* spp. may present a high risk to U.S. agriculture and that *Homeria* spp. meet the criteria for listing as a Federal noxious weed.

Since imported Australian oats are likely to be used as a feed for horses and other livestock, it is likely that the *Homeria* spp. seeds could be introduced into grazing lands and paddocks, where they could do the following:

- Poison livestock and/or humans. Livestock may die within 12 hours or less after ingesting the leaves.
- Reproduce and persist in prolific fashion, thus crowding out desirable plants and competing with them for soil nutrients, reducing the carrying capacity of pastures and reducing crop yields.

Historical data show that, in the 1980's in South Africa, poisoning from *Homeria* spp. and a related genus resulted in losses of $2.5 to $3 million per year in livestock. All classes of livestock are susceptible, but cattle, sheep, goats, and donkeys are most likely to suffer poisoning under natural conditions. Further, since *Homeria* spp. could grow on cultivated land, they may be cut with forage and cause poisoning in stall-fed animals. If *Homeria* spp. are introduced into the United States via Australian oats, U.S. livestock producers could be expected to experience livestock losses similar to those experienced by South Africa in the 1980's.

Effects on Small Entities

The unchecked spread of *Homeria* spp. into the United States can be expected to have a negative economic effect on livestock operations in the United States, whether small or large, given significant negative effects on the regions in Australia and South Africa where *Homeria* spp. are already established. In responding to the potential harm caused by *Homeria* spp. to livestock and grazing lands, one or more organizations or governmental jurisdictions in affected areas could incur control costs if the weed were to be introduced into the environment. Although the size and magnitude of such potential costs are not known, it is clear that this rule will help to prevent the need for such expenditures.

We are aware that there are persons in the nursery trade who import and distribute *Homeria* spp. nursery stock, especially corms. We have no data available on the location, number, or size of those businesses; however, it is likely that the majority of those businesses could be classified as small entities. In our proposed rule, we requested that the public provide any available data relevant to volumes and distribution of imported *Homeria* spp. nursery stock. We received no relevant data in response to our request. Further, we asked the public to provide information on the current distribution and taxonomy of *Homeria* spp. in the United States in order to determine if certain species of *Homeria* spp. are widespread, and, therefore, should be excluded from the noxious weed regulations. We received no information in response to this request, and, therefore, are adopting our proposed rule as a final rule, without change.

We believe that adding *Homeria* spp. to the list of Federal noxious weeds will help preclude potential economic and ecological consequences that could result from its spread.

Alternatives Considered

We considered two alternatives to this rule. One alternative was to make no changes in the regulations; *i.e.*, to not add *Homeria* spp. to the list of Federal noxious weeds. We have rejected that alternative because of the potential economic and ecological consequences that we believe would result from the spread *Homeria* spp. We also considered exempting certain species of the genus *Homeria* from being listed as noxious weeds if we received information documenting that certain

species had become widely distributed in the United States. We did not receive any information on the distribution of any species of the genus *Homeria*, and, therefore, could not select that alternative.

This final rule contains no new information collection or recordkeeping requirements.

Executive Order 12372

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

Accordingly, we are amending 7 CFR parts 360 and 361 as follows:

PART 360—NOXIOUS WEED REGULATIONS

1. The authority citation for part 360 continues to read as follows:

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

§ 360.200 [Amended]

2. In § 360.200, paragraph (c) is amended by adding, in alphabetical order, an entry for "*Homeria* spp.".

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

3. The authority citation for part 361 continues to read as follows:

Authority: 7 U.S.C. 1581–1610; 7 CFR 2.22, 2.80, and 371.2(c).

§ 361.6 [Amended]

4. In § 361.6, paragraph (a)(1) is amended by adding, in alphabetical order, an entry for "*Homeria* spp.".

Done in Washington, DC, this 19th day of May 2000.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–13158 Filed 5–24–00; 8:45 am]

BILLING CODE 3410–34–U

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB87

Loan Policies and Operations; Participations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 614 on April 25, 2000 (65 FR 24101). This final rule deletes requirements for a Farm Credit System (Farm Credit or System) institution to provide notice to or seek consent from other System institutions when it buys participation interests in loans originated outside its chartered territory. Repealing these notice and consent requirements can help increase the flow and availability of agricultural credit and help diversify geographic and industry concentrations in the loan portfolios of Farm Credit banks and associations. As a result of this rule, a Farm Credit bank or association will no longer need approval from other System institutions when it buys participations in loans from non-System lenders. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 25, 2000.

EFFECTIVE DATE: The regulation amending 12 CFR part 614 published on April 25, 2000 (65 FR 24101) is effective May 25, 2000.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498; or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 22, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–13191 Filed 5–24–00; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–04–AD; Amendment 39–11729; AD 2000–10–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Eurocopter France Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J helicopters. This AD requires inspecting each inflation head and union nut on certain emergency flotation gear nitrogen cylinders and replacing each cracked inflation head with an airworthy inflation head. This amendment is prompted by the discovery of cracked inflation heads during routine maintenance inspections of emergency flotation systems. The actions specified by this AD are intended to prevent an emergency flotation gear nitrogen cylinder from exploding with resultant high velocity shrapnel, which could cause airframe damage or personal injury and subsequent loss of control of the helicopter.

DATES: Effective June 29, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 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 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert McCallister, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5121, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that applies to Eurocopter France Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J helicopters was published in the **Federal Register** on December 10, 1999 (64 FR 69206). That action proposed to require inspecting each inflation head and union nut on certain emergency flotation gear nitrogen cylinders and replacing each cracked inflation head with an airworthy inflation head.

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 minor editorial changes.

The FAA estimates that 114 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $2,138 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $271,092.

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 a new airworthiness directive to read as follows:

AD 2000–10–05 Eurocopter France: Amendment 39–11729. Docket No. 99–SW–04–AD.

Applicability: Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, SA330J, SA341G, and SA342J helicopters with emergency flotation gear nitrogen cylinder, P/N ARZ 74921, with inflation head, part number (P/N) 74929, that has no serial number (S/N), or with a S/N lower than 12000, or has a union nut, P/N 75441 or 75834, 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 (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 previously accomplished.

To prevent an emergency flotation gear nitrogen cylinder from exploding with resultant high velocity shrapnel, which could cause airframe damage or personal injury and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model SE.3160, SA.316B, SA.316C, SA.319B, SA330F, SA330G, or SA330J helicopters,

(1) At the next scheduled emergency flotation gear maintenance inspection or 400 hours time-in-service (TIS), whichever occurs first, accomplish the following:

(i) Discharge each emergency flotation gear nitrogen cylinder (cylinder) in accordance with the "Discharge Procedure for the 74921G Cylinder" in Eurocopter France Service Bulletin 05.66, Revision 3, dated May 4, 1998 or Eurocopter France Service Bulletin 05.58, Revision 3, dated May 4, 1998.

(ii) Remove the inflation head and degrease the assembly.

(iii) Perform a dye penetrant inspection of each inflation head and union nut on each emergency flotation gear nitrogen cylinder.

(2) Thereafter, conduct a dye penetrant inspection of each inflation head and union nut on each cylinder at each scheduled emergency flotation gear maintenance inspection or at intervals of not more than 400 hours TIS, whichever occurs first.

(b) For Model SA341G or SA342J helicopters,

(1) At the next scheduled emergency flotation gear maintenance inspection or 520 hours time-in-service, whichever occurs first, accomplish the following:

(i) Discharge each emergency flotation gear nitrogen cylinder in accordance with the "Discharge Procedure for the 74921G Cylinder" in Eurocopter France Service Bulletin 05.19, Revision 3, dated May 4, 1998.

(ii) Remove the inflation head and degrease the assembly.

(iii) Perform a dye penetrant inspection of each inflation head and union nut on each cylinder.

(2) Thereafter, conduct a dye penetrant inspection of each inflation head and union nut on each cylinder at each scheduled emergency flotation gear maintenance inspection or at intervals of not more than 520 hours TIS, whichever occurs first.

(c) Before further flight, replace each cracked inflation head, P/N 74929, with an airworthy inflation head having S/N 12000 or higher.

(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, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

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

(f) The discharge of each cylinder shall be done in accordance with the "Discharge Procedure for the 74921G Cylinder" in Eurocopter France Service Bulletin 05.66, Revision 3, dated May 4, 1998; Eurocopter France Service Bulletin 05.58, Revision 3, dated May 4, 1998; or Eurocopter France Service Bulletin 05.19, Revision 3, 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.

(g) This amendment becomes effective on June 29, 2000.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD's 80–062–041(A) R2, 80–063–030(A) R2, and 80–061–028(A) R2, all dated July 15, 1998.

Issued in Fort Worth, Texas, on May 5, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–12351 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–112–AD; Amendment 39–11747; AD 99–15–04 R1]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc., Models PA–46–310P and PA–46–350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 99–15–04, which currently requires you to calibrate, inspect, and repair or replace portions of the turbine inlet temperature system on all The New Piper Aircraft, Inc. (New Piper) Models PA–46–310P and PA–46–350P airplanes (different actions for different airplane models). Information reveals that the AD should not apply to airplanes where the factory installed turbine inlet temperature gauge and associated probe have been replaced through supplemental type certificate (STC). This AD retains the actions of AD 99–15–04, and restricts the applicability accordingly. The actions specified by this AD are intended to prevent improper engine operation caused by improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes, which could result in engine damage/failure with consequent loss of control of the airplane.

EFFECTIVE DATE: This AD becomes effective on July 28, 2000.

ADDRESSES: You may examine information related to this AD at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–112–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Donald J. Young, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: "Donald.Young@faa.gov".

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

Has FAA taken any action to this point? Field reports that indicated service accuracy problems with the existing turbine inlet temperature system on certain New Piper Models PA–46–310P and PA–46–350P airplanes caused FAA to issue AD 99–15–04, Amendment 39–11223. This AD currently requires you to accomplish the following:

1. Calibrate the turbine inlet temperature system to assure the accuracy of the existing turbine inlet temperature indicator and wiring on all airplanes;
2. Repair or replace any turbine inlet temperature system that fails the calibration test on all airplanes;
3. Repetitively replace the turbine inlet temperature probe on the Model PA–46–350P airplanes; and
4. Insert a copy of the AD into the Pilot's Operating Handbook (POH) of certain airplanes.

Since issuing AD 99–15–04, we have received information to show that the AD should not apply on airplanes where the factory installed turbine inlet temperature gauge and associated probe were replaced through supplemental type certificate (STC).

To address this issue, we issued a notice of proposed rulemaking (NPRM) to revise AD 99–15–04. This NPRM was published in the **Federal Register** on November 5, 1999 (64 FR 60383). The NPRM proposed to continue to require you to accomplish all the actions that AD 99–15–04 currently requires. Those airplanes that do not have a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed, and where this system was replaced in accordance with an STC, would be excluded from the AD. Relief from the AD is available only if the gauge and probe are replaced through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

Was the public invited to comment on the NPRM? The FAA invited interested persons to participate in the making of the amendment. A summary of the comments and FAA's responses follows:

Comment Issue No. 1: Provide Justification for Indefinite Life of Probes Installed Through STC

What is the commenter's concern? One commenter requests an explanation on how FAA determined that the turbine inlet temperature gauge and associated probe would last indefinitely if installed through STC.

What is FAA's response to the concern? Our intent of this AD is not to life limit the turbine inlet temperature system. We are issuing the AD to assure that the system is calibrated correctly and assure that certain parts of this system are checked and replaced accordingly. We have not received any service history or other evidence of problems with those systems installed in accordance with an STC. We also have not received any evidence of inadequate maintenance instructions for any system installed in accordance with an STC. If an unsafe condition develops on airplanes with these systems installed per STC, we will issue an AD against airplanes with that specific configuration.

We are not changing the AD as a result of this comment.

Comment Issue No. 2: Provide Specific STC Numbers and Holders

What are the commenter's concerns? One commenter requests that FAA include a list of STC numbers and holders of those STC's that provide relief from this AD. This commenter also points out that relief should also be given if New Piper (the manufacturer) develops a new turbine temperature inlet system since we are allowing relief for any STC, whether currently-approved or approved in the future.

What is FAA's response to the concerns? We have elected not to provide a list of STC's that provide relief because the FAA having to revise the AD every time a new STC was developed and certificated would make tracking of this AD action confusing and impractical. We acknowledge that New

Piper could develop a system that could be eligible for relief from the actions in this AD. In this case, New Piper could request an alternative method of compliance to the AD. If we approve, then New Piper could include a statement in the maintenance instructions that installation of such a system is considered an alternative method of compliance to the AD per a specific FAA letter, or FAA could revise the AD to exclude such systems.

We are not changing the AD as a result of this comment.

Comment Issue No. 3: Include Piper Service Bulletin No. 995A in the AD

What is the commenter's concern? One commenter requests that FAA reference Piper Service Bulletin No. 995A, dated April 26, 1996, in the AD.

What is FAA's response to the concern? Piper Service Bulletin No. 995A, dated April 26, 1996, contains information related to the subject of this AD. However, if you comply with this service bulletin, you have not accomplished all of the actions required by the AD. Therefore, we are not mandating compliance with the service bulletin. Instead we are including the following statement in the AD: "Piper Service Bulletin 995A, dated April 26, 1996, contains information related to the subject matter of this AD."

The FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—the addition of the statement that Piper Service Bulletin No. 995A contains information related to the subject matter of this AD; and

—minor editorial corrections.

How does the addition and corrections affect the AD? We have determined that the addition and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD will affect 580 airplanes in the U.S. registry.

What is the cost impact of the affected airplanes on the U.S. Register? We estimate 4 workhours per airplane to accomplish the calibration at an average labor rate of $60 an hour. Based on these figures, we estimate the cost impact of the calibration on U.S. operators at $139,200, or $240 per airplane.

We estimate 1 workhour per airplane to accomplish the initial turbine inlet temperature probe replacement at an average labor rate of $60 an hour. Parts cost approximately $518. We estimate the cost impact of the replacement on U.S. operators at $335,240, or $578 per airplane.

What about repetitive actions? These figures only take into account the initial replacement and do not take into account the cost of subsequent repetitive replacements. We have no way of determining the number of replacements each owner/operator will incur over the life of the affected airplanes.

What is the cost impact difference between this AD and AD 99–15–04? The cost impact of this AD is the same as that specified in AD 99–15–04. The only difference between AD 99–15–04 and this AD is the exemption of certain airplanes from this AD if a certain turbine inlet temperature gauge and associated probe is installed.

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 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 on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules. We have placed a copy of the final regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it at 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, under 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. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 99–15–04, Amendment 39–11223 (64 FR 37699, July 13, 1999), and adding a new AD to read as follows:

99–15–04 R1 The New Piper Aircraft, Inc.: Amendment 39–11747; Docket No. 98–CE–112–AD; Revises AD 99–15–04, Amendment 39–11223.

(a) *What airplanes are affected by this AD?* This AD applies to Models PA–46–310P and PA–46–350P airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Equipped with a Lewis or Transicoil Turbine Inlet Temperature Gauge and associated probe installed. Relief from the AD is available only if the gauge and probe are replaced through STC and not if a second turbine inlet temperature gauge was installed while retaining the Lewis or Transicoil gauge and probe.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions required in this AD are intended to detect and correct improperly calibrated turbine inlet temperature indicators or defective turbine inlet temperature probes. This condition, if not detected and corrected, could result in improper engine operation and engine damage/failure with consequent loss of control of the airplane.

(d) What must I do to address this problem? To address this problem, you must accomplish the following actions:

(1) For the Model PA–46–310P airplanes:

Compliance time	Action	In accordance with
(i) Within the next 100 hours time-in-service (TIS) after August 31, 1999 (the effective date of the AD 99–15–04).	(A) Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection.	The PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (section A.(1)(d), pages 1 and 2).
	(B) Accomplish the Turbine Inlet Temperature System Calibration.	The PA–46–310P/350P Maintenance Manual, Chapter 77–20–00 (pages 3 and 4).
(ii) Prior to further flight after the above cleaning, inspection, and calibration.	Repair or replace any failed parts (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection) with serviceable parts that are listed in paragraph (e) of this AD.	Equipment manufacturer instructions and the applicable maintenance manual.
(iii) Within the next 100 hours TIS after August 31, 1999 (the effective date of the AD 99–15–04), unless the applicable Pilot's Operating Handbook (POH) revision is incorporated as presented in paragraph (f) of this AD.	(A) Incorporate the emergency procedures presented in paragraph (g) of this AD into the POH. (B) This may be accomplished by inserting a copy of this AD into the POH.	Not applicable.
(iv) As of July 28, 2000 (the effective date of this AD).	Do not install one of the affected Lewis or Transicoil turbine inlet temperature gauges or probes without assuring that it is airworthy and properly calibrated.	Use the procedures located in the previously referenced maintenance manual sections and pages.

(2) For the Model PA–46–350P airplanes:

Compliance time	Action	In accordance with
(i) Within the next 100 hours TIS after August 31, 1999 (the effective date of AD 99–15–04).	(A) Perform the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection.	For serial numbers 4622001 through 4622200 and 4636001 through 4636020, utilize the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1). For all serial numbers beginning with 4636021, utilize the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.C, page 1).
	(B) Accomplish the Turbine Inlet Temperature System Calibration.	For serial numbers 4622001 through 4622200 and 4636001 through 4636020, utilize the PA–46–350P Maintenance Manual, Chapter 77–20–00 (section 1.I, pages 4 through 7). For all serial numbers beginning with 4636021, calibration is not required.
(ii) Prior to further flight after the above cleaning, inspection, and calibration.	Repair or replace any failed parts (the turbine inlet temperature system indicator cannot be calibrated or the turbine inlet temperature probe fails the inspection) with serviceable parts that are listed in paragraph (e) of this AD.	Equipment manufacturer instructions and the applicable maintenance manual.
(iii) Upon accumulating 250 hours TIS on the currently installed turbine inlet temperature probe or within the next 100 hours TIS after August 31, 1999 (the effective date of AD 99–15–04), whichever occurs later, and thereafter at intervals not to exceed 250 hours TIS.	Replace the turbine inlet temperature probe with a new part number 481–389 or 481–392 probe.	Equipment manufacturer instructions and the applicable maintenance manual.
(iv) Within the next 100 hours TIS after August 31, 1999 (the effective date of the AD 99–15–04), unless the applicable Pilot's Operating Handbook (POH) revision is incorporated as presented in paragraph (f) of this AD.	(A) Incorporate the emergency procedures presented in paragraph (g) of this AD into the POH. (B) This may be accomplished by inserting a copy of this AD into the POH.	Not applicable.
(v) As of July 28, 2000 (the effective date of this AD).	Do not install one of the affected Lewis or Transicoil turbine inlet temperature gauges or probes without assuring that it is airworthy and properly calibrated.	Use the procedures located in the previously referenced maintenance manual sections and pages.

(3) Operators of the Model PA–46–350P airplanes with over 150 hours TIS on the currently installed turbine inlet temperature probe will have to replace the probe as required in paragraph (d)(2)(iii) of this AD. In this case, the operator may want to accomplish the replacement prior to the Turbine Inlet Temperature Gauge and Probe Cleaning and Inspection, and Turbine Inlet Temperature System Calibration.

(e) *What are the part numbers of the replacement parts referenced in paragraph (d)(2)(ii) of this AD?*

Equipment name and manufacturer	Part No.
(1) Lewis Turbine Inlet Temperature Analog Indicator	471–008. This is the only indicator that has a zero adjustment screw.
(2) Lewis Turbine Inlet Temperature Digital Indicator	548–811. Since this indicator does not have a zero adjustment screw, you must return it to the factory for adjustment or replacement.
(3) Lewis Turbine Inlet Temperature Probe	471–009 for the Model PA–46–310P airplanes and 481–389 or 481–392 for the Model PA–46–350P airplanes.

(f) *What are the POH revisians that can be incarporated instead af the emergency pracedures that this AD requires?*
(1) For operators of the Model PA–46–310P airplanes:

POH	Revision/date	Affected serial numbers
VB–1200	16/March 19, 1999	46–8408001 through 46–8608067 and 4608001 through 4608007.
VB–1300	13/February 25, 1999	4608008 through 4608140.

(2) For operators of the Model PA–46–350P airplanes:

POH	Revision/date	Affected serial numbers
VB–1332	16/November 14, 1997	4622001 through 4622200.
VB–1609	1/November 21, 1997	463001 through 4636020.
VB–1602	1/November 28, 1997	4636021 through 4636131.
VB–1446	New/December 3, 1997	4636132 through 4636195.
VB–1710	New/February 23, 1999	All serial numbers beginning with 4636196.

(g) *What are the emergency pracedures referenced in paragraphs (d)(1)(iii) and (d)(2)(iv) af this AD?*
(1) For Model PA–46–310P airplanes:
(i) If the turbine inlet temperature indication fails during takeoff, climb, descent, or landing, maintain FULL RICH mixture to assure adequate fuel flow for engine cooling.
(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain cruise power setting and lean to 6 gallons per hour (GPH) fuel flow above that specified in the Power Setting Table in Section 5 of the AFM/POH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.
(2) For Model PA–46–350P airplanes:
(i) If the turbine inlet temperature indication fails during takeoff, climb, descent or landing, set power per the POH Section 5 Power Setting Table and then lean to the approximate POH Power Setting Table fuel flow plus 4 GPH.
(ii) If the turbine inlet temperature indication fails after cruise power has been set, maintain the power setting and increase indicated fuel flow by 1 GPH. Continually monitor engine cylinder head and oil temperatures to avoid exceeding temperature limits.

(h) *Did The New Piper Aircraft, Inc. develap service infarmatian related ta this subject?* Piper Service Bulletin 995A, dated April 26, 1996, contains information that related to the subject matter of this AD. However, if you comply with this service bulletin, you have not accomplished all of the actions required by the AD. Therefore, we are not mandating compliance with the service bulletin.

(i) *Can the pilat accamplish the actian?* Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may insert a copy of this AD into the POH, as required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(j) *Can I camply with this AD in any ather way?* You may use an alternative method of compliance or adjust the compliance time if:
(1)(i) Your alternative method of compliance provides an equivalent level of safety; and
(ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.
(2) Alternative methods of compliance approved in accordance with AD 99–15–04 are approved as alternative methods of compliance for this AD.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (j) 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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(k) *Where can I get infarmatian abaut any already-approved alternative methods of campliance?* Contact Donald Young, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6079; facsimile: (770) 703–6097; e-mail address: "Donald.Young@faa.gov".

(l) *What if I need ta fly the aircraft ta another lacation to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your aircraft to a location where you can accomplish the requirements of this AD.

(m) *Does this AD actian affect any existing AD actions?* This amendment revises AD 99–15–04, Amendment 39–11223.

(n) *When daes this amendment became effective?* This amendment becomes effective on July 28, 2000.

Issued in Kansas City, Missouri, on May 17, 2000.

Michael Gallagher,

Manager, Small Airplane Directarate, Aircraft Certification Service.

[FR Doc. 00–13083 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–10]

Revision of Class D Airspace, Alexandria England AFB, LA; Revocation of Class D Airspace, Alexandria Esler Regional Airport, LA; and Revision of Class E Airspace, Alexandria, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D Airspace at Alexandria England AFB, LA; revokes Class D Airspace at Alexandria Esler Regional Airport, LA; and revises Class E Airspace at Alexandria, LA.

EFFECTIVE DATE: The direct final rule published at 65 FR 15860 is effective 0901 UTC, August 10, 2000.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 24, 2000, (65 FR 15860). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–13176 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AEA–07]

Establishment of Class D Airspace; Salisbury, MD

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace area at Salisbury, MD. The commissioning of a new Air Traffic Control Tower (ATCT) at the Salisbury-Ocean City, Wicomico Regional Airport (SBY) has made this proposal necessary. Controlled airspace extending upward from the surface to 2,500 feet Above Ground Level (AGL) is needed to accommodate Instrument Flight Rules (IFR) operations to the airport.

EFFECTIVE DATE: 0901 UTC, 13 July 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On June 7, 1999, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Salisbury, MD was published in the **Federal Register** (64 FR 30259–30260). A new Air Traffic Control Tower (ATCT) made this action necessary. Controlled airspace extending upward to 2,500 feet above Ground Level (AGL) is needed to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the en-route and terminal environments. The notice proposed to designate the entire Class E airspace that is now in existence to Class D airspace. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Comments to the proposal were received which labeled the proposed Class D airspace excessive when it includes all of the Class E airspace assigned to Salisbury Airport area. After further review the airspace area is amended so that the established Class D airspace is only the area within a 6.6 mile radius of the airport.

The coordinates for this airspace docket are based on North American Datum 83.

Class D airspace areas designations for airspace extending upward from the surface to a specified level are published in paragraph 5000 of FAA Order 7400.9F, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Salisbury, MD extending upward from the surface to 2,500 feet AGL.

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 significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 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 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace area consisting of specified airspace within which all aircraft operators are subject to operating rules and equipment requirements of Part 91 of the Federal Aviation Regulation.

AEA MD D Salisbury, MD [Original]

Salisbury-Ocean City, Wicomico County Regional Airport, MD.

(Lat. 3820.26 N/long. 753062 W)
Salisbury VORTAC
(Lat. 3820.70 N/long. 753064 W)

That airspace extending upward from the surface to an including 2,500 feet MSL within a 6.6 mile radius of the Salisbury-Wicomico County Regional Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport Facility Directory.

* * * * *

Issued in Jamaica, New York on May 9, 2000.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 00–13173 Filed–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–08]

Revision of Class E Airspace; Waco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Waco, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 14856 is effective 0901 UTC, August 10, 2000.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 20, 2000, (65 FR 14856). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised that public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–13178 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–09]

Revision of Class E Airspace; Fort Stockton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Fort Stockton, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 14855 is effective 0901 UTC, August 10, 2000.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 20, 2000, (65 FR 14855). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 10, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on May 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–13177 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–01]

Revision of Class E Airspace, Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Englewood, CO, Class E airspace to accommodate the revision of a Standard Instrument Approach Procedure (SIAP) at the Centennial Airport, Englewood, CO.

EFFECTIVE DATE: 0901 UTC, August 10, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On January 24, 2000, the FAA proposed to amend 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 provides 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 en route enivornments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This rule promotes safe flight operations under Instrument Flight Rules (IFR) at the Centennial Airport and between the terminal and en route transition stages.

The area will 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 in 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 will be published subsequently in the Order.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) revise Class E airspace extension at Englewood, CO, in order to accommodate a revised SIAP to the Centennial Airport, Englewood, CO. This amendment provides 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 en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Centennial Airport and between the terminal and en route transition stages.

The area will 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 will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 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 Closs E oirspoce areas designated os on extension to o Class D oirspace oreo.

* * * * *

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.

* * * * *

Issued in Seattle, Washington, DC on May 12, 2000.

Daniel A. Boyle,

Acting Monoger, Air Traffic Division, Northwest Mountoin Region.

[FR Doc. 00–13174 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121 and 135

[Docket No. FAA–1999–5926; Amendment Nos. 91–263, 93–80, 121–274 and 135–75]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule, published in the **Federal Register** on April 4, 2000 (65 FR 17736). That final rule amends special operating rules and airspace for those persons operating aircraft in the area designated as the Grand Canyon National Park Special Flight Rules Area (SFRA). That rule assists the National Park Service in fulfilling the statutory mandate of substantial restoration of the natural quiet and experience of the park.

DATES: This correction is effective December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, (202) 267–8741.

Correction of Publication

In final rule FR Doc. 00–7950, beginning on page 17736 in the **Federal Register** issue of April 4, 2000, make the following correction:

1. On page 17736, in column 1, in the heading section, beginning on line 4, correct "Amendment No. 93–80" to read "Amendment Nos. 91–263, 93–80, 121–274 and 135–75".

Issued in Washington, DC on May 15, 2000.

Donald P. Byrne,

Assistont Chief Counsel, Regulations Division.

[FR Doc. 00–12819 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

Changes to the International Aviation Safety Assessment (IASA) Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement.

SUMMARY: This notice describes recent policy changes to the FAA's

International Aviation Safety Assessment (IASA) program, which involves assessing whether another country's oversight of its air carriers that operate, or seek to operate, into the United States complies with minimum international standards for aviation safety. The FAA is making these changes as it commences a new phase of the IASA program following the completion of initial determinations on the safety oversight exercised by virtually all countries whose air carriers operate, or have applied to operate, to the United States. This notice modifies the IASA policies previously announced by the FAA.

DATES: This policy modification is effective May 25, 2000. Comments on this policy may be directed to the address below.

ADDRESSES: Send comments to Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Jensen, International Liaison Staff, AFS–50, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; (202) 267–3719.

SUPPLEMENTARY INFORMATION:

Background

The policy announced at 57 FR 38342, August 24, 1992, described how the FAA would assess whether a foreign civil aviation authority (CAA) complied with the minimum international standards for aviation safety oversight established by the International Civil Aviation Organization (ICAO). In obtaining information relevant to its assessment, the FAA meets with the foreign CAA responsible for providing the safety oversight to its carriers, reviews pertinent records and meets with officials of the subject foreign air carriers. The FAA then analyzes the collected information to determine whether the CAA complies with ICAO standards regarding the oversight provided to the air carriers under its authority. This determination is part of the basis for FAA recommended courses of action to the Department of Transportation on the initiation, continuation, or expansion of air service to the United States by the carriers overseen by that CAA. The IASA program applies to all foreign countries with air carriers proposing or have existing air service to the United States under an economic authority issued by the Department

The policy announced at 59 FR 46332, September 8, 1994, concerned the FAA's decision to publicly disclose the results of FAA assessments. In connection with the public disclosure policy, the FAA established three categories of ratings for countries to signify the status of a CAA's compliance with minimum international safety standards: Category I (Acceptable), Category II (Conditional), and Category III (Unacceptable). Category II or III apply to countries whose CAAs are found not to be providing safety oversight in compliance with the minimum international standards established by ICAO. The FAA normally places a country in Category II if one of its carriers provided air service to the United States at the time of the FAA assessment. The FAA places a country in Category III if none of its carriers provided air service to the United States at the time of the FAA assessment. Carriers from Category II countries are permitted to maintain, but not expand, current levels of service under heightened FAA surveillance. Carriers from Category III countries are not permitted to commence service to the United States.

Program and Public Disclosure Changes

Sources of Information on Safety Oversight

The FAA has a continuing obligation to ensure that CAAs comply with minimum international standards for safety oversight. In collecting information to support its assessment findings, the FAA will continue to rely, when necessary, on meetings with CAA and airline officials and reviewing pertinent documents. The FAA also will make use of other sources of information on CAA compliance with minimum international standards for safety oversight. These sources may include other qualified entities (e.g., the European Joint Aviation Authorities or ICAO) considered reliable by the FAA.

Categorization of Results of FAA Assessments

As in the past, assessment determinations will continue to be publicly disclosed. However, FAA will only use two categories in the future, i.e., Category 1 (in compliance with minimum international standards for aviation safety) and Category 2 (not in compliance with minimum international standards for aviation safety). This change is being made to eliminate any confusion that has resulted from having two different categories regarding non-compliance with ICAO standards. We believe that there has been a misimpression created that being in Category II reflects a higher degree of compliance with ICAO standards than being in Category III. To correct this misimpression and make clear that no inferences should be drawn about relative degrees of ICAO compliance, we are deleting Category III and redefining Category II as follows:

Category 2. The Federal Aviation Administration assessed this country's civil aviation authority and determined that it does not provide safety oversight of its air carrier operators in accordance with the minimum safety oversight standards established by the International Civil Aviation Organization (ICAO). This rating is applied if one or more of the following deficiencies are identified: (1) The country lacks laws or regulations necessary to support the certification and oversight of air carriers in accordance with minimum international standards; (2) the CAA lacks the technical expertise, resources, and organization to license or oversee air carrier operations; (3) the CAA does not have adequately trained and qualified technical personnel; (4) the CAA does not provide adequate inspector guidance to ensure enforcement of, and compliance with, minimum international standards, and (5) the CAA has insufficient documentation and records of certification and inadequate continuing oversight and surveillance of air carrier operations. This category consists of two groups of countries.

One group are countries that have air carriers with existing operations to the United States at the time of the assessment. While in Category 2 status, carriers from these countries will be permitted to continue operations at current levels under heightened FAA surveillance. Expansion or changes in services to the United States by such carriers are not permitted while in category 2, although new services will be permitted if operated using aircraft wet-leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a category 1 country that is authorized to serve the United States using its own aircraft.

The second group are countries that do not have air carriers with existing operations to the United States at the time of the assessment. Carriers from these countries will not be permitted to commence service to the United States while in Category 2 status, although they may conduct services if operated using aircraft wet-leased from a duly authorized and properly supervised U.S. carrier or a foreign air carrier from a Category 1 country that is authorized to serve the United States with its own aircraft.

No other difference is made between these two groups of countries while in a category 2 status.

Transition to New IASA Categorization System

Countries in the former Category I will initially be placed in the new Category 1 (in compliance with ICAO Standards). Countries in the former Categories II and III will initially be placed in the new Category 2 (not in compliance with ICAO standards). For those countries not serving the U.S. at the time of the assessment, an asterisk "*" will be added to their Category 2 determination.

The FAA will review the category determinations of all countries included in the IASA categorization scheme at least once every two years, or when new information becomes available which calls into question the country's ability to continue complying with minimum standards for aviation safety. The purpose of such reviews is to determine if a country's CAA continues to comply with minimum international standard for aviation safety (Category I) or is making sustainable progress toward compliance (Category 2). After each such review, the FAA will update the appropriate public disclosure.

The FAA will continue to work with countries to improve safety oversight capabilities in cases where the assessment process has revealed deficiencies. When FAA determines that sustainable progress is not being made, or is not possible under the prevailing circumstances in the country, it may advise the Office of the Secretary that the subject country has not made significant progress in correcting its safety oversight deficiencies and recommend a course of action to review the status of all authorities issued to carriers of that country.

Current IASA category determinations for countries included in the IASA categorization system are available on the FAA web-site at http://www.faa.gov/avr/isa.htm

Issued in Washington, DC on May 15, 2000.

Thomas E. McSweeny,

Associate Administrator for Regulation and Certification.

[FR Doc. 00–13179 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8884]

RIN 1545–AV88

Consolidated Returns—Limitations on the Use of Certain Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding certain credits of corporations that become members of a consolidated group. The regulations provide rules for computing the limitation with respect to certain credits earned in a separate return limitation year (SRLY) and the carryover and carryback of those credits to consolidated and separate return years. The regulations also eliminate the application of the SRLY rules in certain circumstances in which the rules of section 383 also apply.

DATES: *Effective Date:* These regulations are effective May 25, 2000.

Applicability Dates: For dates of applicability, see the "Dates of Applicability" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Marie C. Milnes-Vasquez, (202) 622–7770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. In General

On January 12, 1998, the IRS and Treasury published in the **Federal Register** a Treasury decision (TD 8751, 63 FR 1740) containing temporary regulations concerning the use of certain tax attributes by a consolidated group. In part, these regulations provided rules governing the absorption of general business credits and minimum tax credits carried from separate return limitation years (SRLYs), and eliminated SRLY restrictions with respect to recapture of overall foreign losses (OFLs) and on the use of foreign tax credits of corporations joining a group. Further, this Treasury decision contained a final regulation eliminating the limitation on credit carryovers following a consolidated return change of ownership (CRCO).

A notice of proposed rulemaking cross-referencing the temporary regulations was published in the **Federal Register** on the same day (63 FR 1803). On March 16, 1998, the IRS and Treasury published temporary amendments to those consolidated return regulations (TD 8766, 63 FR 12641) and the corresponding notice of proposed rulemaking (63 FR 12717) modifying the general date of applicability contained in the January 12, 1998 temporary regulations. Per the amendment, the January 12, 1998 temporary regulations, as amended, are generally applicable for consolidated return years for which the due date of the return is after March 13, 1998. The amendments provided further guidance with respect to consolidated return years beginning on or after January 1, 1997, for which the income tax return is due on or before March 13, 1998.

On August 11, 1999, the IRS and Treasury issued final regulations relating to the recapture of OFLs (including elimination of any SRLY limitation on such recapture). (TD 8833, 64 FR 43613).

This Treasury decision adopts without substantive change the portions of the temporary regulations that were issued in 1998, relating to general business credits and minimum tax credits, with the addition of the "overlap rule", discussed in *Extension of 1999 Principles* of this preamble. This Treasury decision also makes final the rules eliminating SRLY restrictions on the use of foreign tax credits, and the rules repealing the consolidated return change of ownership provisions pertaining to those credits.

B. Extension of 1999 Principles

On July 2, 1999, the IRS and Treasury published in the **Federal Register** a Treasury decision (TD 8823, 64 FR 36092) containing final regulations providing rules governing the absorption of certain tax attribute carryovers and carrybacks from separate return limitation years (SRLYs). These tax attributes included net operating losses and net capital losses. The rules also governed the absorption of recognized built-in losses. These regulations, in part, eliminated the application of the SRLY rules in certain circumstances in which the rules of section 382 also apply (overlap rule).

The IRS and Treasury believe that it is appropriate to apply a single set of SRLY principles to all attributes that are subject to SRLY limitations. Unnecessary complexity would result from applying different principles to different attributes. Accordingly, this document extends the principles of the overlap rule of the 1999 final regulations to the general business credit and the minimum tax credit. These final regulations adopt the mechanism of subgrouping and the

overlap rule set forth in § 1.1502–21 (including the requirements of coextensive subgroups and contemporaneity).

C. Dates of Applicability

The final regulations generally are applicable to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. However, there are some special effective dates. The rules contained in these final regulations (except the overlap rule) may be applied optionally to years beginning on or after January 1, 1997. Application of the overlap principles of § 1.1502–21(g) is generally effective for consolidated return years for which the return (without extensions) is due after May 25, 2000.

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 is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations principally affect persons filing consolidated federal income tax returns that have carryover or carryback of credits from separate return limitation years. Available data indicates that many consolidated return filers are large companies (not small businesses). In addition, the data indicates that an insubstantial number of consolidated return filers that are smaller companies have credit carryovers or carrybacks, and thus even fewer of these filers have credit carryovers or carrybacks that are subject to the separate return limitation year rules. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking accompanying these regulations was sent to the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Marie C. Milnes-Vasquez 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.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for sections 1.1502–3T and 1.1502–55T and adding entries in numerical order to read in part as follows:

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

Section 1.1502–3 also issued under 26 U.S.C. 1502.

Section 1.1502–4 also issued under 26 U.S.C. 1502. * * *.

Section 1.1502–55 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–3 is amended as follows:

1. The section heading is revised.

2. Paragraph (b)(3) is added.

3. Paragraphs (c), (d), and (e)(3) are revised.

The addition and revisions read as follows:

§ 1.1502–3 Consolidated tax credits.

* * * * *

(b) * * *

(3) *Example.* The provisions of paragraphs (a) and (b) of this section may be illustrated by the following example:

Example. (i) Corporation P is incorporated on January 1, 1966. On that same day P incorporates corporation S, a wholly owned subsidiary. P and S file consolidated returns for calendar years 1966 and 1967. P's and S's credit earned, the consolidated credit earned, and the consolidated limitation based on amount of tax for 1966 and 1967 are as follows:

	Credit earned	Consolidated credit earned	Consolidated limitation based on amount of tax
1966:			
P	$60,000		
S	30,000	$90,000	$100,000
1967:			
P	40,000		
S	25,000	65,000	50,000

(ii) P's and S's credit earned for 1966 are aggregated, and the group's consolidated credit earned, $90,000, is allowable in full to the group as a credit under section 38 for 1966 since such amount is less than the consolidated limitation based on amount of tax for 1966, $100,000.

(iii) Since the consolidated limitation based on amount of tax for 1967 is $50,000, only $50,000 of the $65,000 consolidated credit earned for such year is allowable to the group under section 38 as a credit for 1967. The consolidated unused credit for 1967 of $15,000 ($65,000 less $50,000) is a consolidated investment credit carryback and carryover to the years prescribed in section 46(b). In this case the consolidated unused credit is a consolidated investment credit carryback to 1966 (since P and S were not in existence in 1964 and 1965) and a consolidated investment credit carryover to 1968 and subsequent years. The portion of the consolidated unused credit for 1967 which is allowable as a credit for 1966 is $10,000. This amount shall be added to the amount allowable as a credit to the group for 1966. The balance of the consolidated unused credit for 1967 to be carried to 1968 is $5,000. These amounts are computed as follows:

Consolidated carryback to 1966			$15,000
1966 consolidated limitation based on tax		$100,000	
Less: Consolidated credit earned for 1966	$90,000		
Consolidated unused credits attributable to years preceding 1967	0	90,000	
Limit on amount of 1967 consolidated unused credit which may be added as a credit for 1966			10,000
Balance of 1967 consolidated unused credit to be carried to 1968			5,000

(c) *Limitation on investment credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is on or before March 13, 1998—(1) General rule.* In the case of an unused credit of a member of the group arising in a separate return limitation year (as defined in § 1.1502–1(f)) of such member (and in a separate return limitation year of any predecessor of such member), the amount which may be included under paragraph (b) of this section (computed without regard to the limitation contained in paragraph (e) of this section) shall not exceed the amount determined under paragraph (c)(2) of this section.

(2) *Computation of limitation.* The amount referred to in paragraph (c)(1) of this section with respect to a member of the group is the excess, if any, of—

(i) The limitation based on amount of tax of the group, minus such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of such member; over

(ii) The sum of the investment credit earned by such member for such consolidated return year, and the unused credits attributable to such member which may be carried to such consolidated return year arising in unused credit years ending prior to the particular separate return limitation year.

(3) *Special effective date.* This paragraph (c) applies to consolidated return years for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d) of this section for the rule that limits the group's use of a section 38 credit carryover or carryback from a SRLY for a consolidated return year for which the due date of the income tax return (without extensions) is after March 13, 1998. See also paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (c) inapplicable to a consolidated return year beginning after December 31, 1996, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(4) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples:

Example 1. (i) Assume the same facts as in the example contained in paragraph (b)(3) of this section, except that all the stock of corporation T, also a calendar year taxpayer, is acquired by P on January 1, 1968, and that P, S, and T file a consolidated return for 1968. In 1966, T had an unused credit of $10,000 which has not been absorbed and is available as an investment credit carryover to 1968. Such carryover is from a separate return limitation year. P's and S's credit earned for 1968 is $10,000 each, and T's credit earned is $8,000; the consolidated credit earned is therefore $28,000. The group's consolidated limitation based on amount of tax for 1968 is $50,000. Such limitation recomputed by excluding the items of income, deduction, and foreign tax credit of T is $30,000. Thus, the amount determined under paragraph (c)(2)(i) of this section is $20,000 ($50,000 minus $30,000). Accordingly, the limitation on the carryover of T's unused credit is $12,000, the excess of $20,000 over $8,000 (the sum of T's credit earned for the taxable year and any carryovers from prior unused credit years (none in this case)). Therefore T's $10,000 unused credit from 1966 may be carried over to the consolidated return year without limitation.

(ii) The group's consolidated credit earned for 1968, $28,000, is allowable in full as a credit under section 38 since such amount is less than the consolidated limitation based on amount of tax, $50,000.

(iii) The group's consolidated investment credit carryover to 1968 is $15,000, consisting of the consolidated unused credits of the group ($5,000) plus T's separate return year unused credit ($10,000). The entire $15,000 consolidated carryover shall be added to the amount allowable to the group as a credit under section 38 for 1968, since such amount is less than $22,000 (the excess of the consolidated limitation based on tax, $50,000, over the sum of the consolidated credit earned for 1968, $28,000, and unused credits arising in prior unused credit years, zero).

Example 2. Assume the same facts as in *Example 1*, except that the amount determined under paragraph (c)(2)(i) of this section is $12,000. Therefore, the limitation on the carryover of T's unused credit is $4,000. Accordingly, the consolidated investment credit carryover is only $9,000 since the amount of T's separate return year unused credit which may be added to the group's $ 5,000 consolidated unused credit is $4,000. These amounts are computed as follows:

T's carryover to 1968			$10,000
Consolidated limitation based on amount of tax minus recomputed limitation		$12,000	
Less: T's credit earned for 1968	$8,000		
Unused credits attributable to T arising in unused credit years preceding 1966	0	$8,000	
Limit on amount of 1966 unused credit of T which may be added to consolidated investment credit carryover			4,000
Balance of 1966 unused credit of T to be carried to 1969 (subject to the limitation contained in paragraph (c) of this section)			6,000

(d) *Limitation on tax credit carryovers and carrybacks from separate return limitation years applicable for consolidated return years for which the due date of the return is after March 13, 1998—*(1) *General rule.* The aggregate of a member's unused section 38 credits arising in SRLYs that are included in the consolidated section 38 credits for all consolidated return years of the group may not exceed—

(i) The aggregate for all consolidated return years of the member's contributions to the consolidated section 38(c) limitation for each consolidated return year; reduced by

(ii) The aggregate of the member's section 38 credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(2) *Computational rules*—(i) *Member's contribution to the consolidated section 38(c) limitation.* If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated tentative minimum tax (see section 38(c)(1)(A)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus the member's share of the consolidated tentative minimum tax. If the consolidated section 38(c) limitation for a consolidated return year is determined by reference to the consolidated net regular tax liability (see section 38(c)(1)(B)), then a member's contribution to the consolidated section 38(c) limitation for such year equals the member's share of the consolidated net income tax minus 25 percent of the quantity which is equal to so much of the member's share of the consolidated net regular tax liability less its portion of the $25,000 amount specified in section 38(c)(1)(B). The group computes the member's shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100% allocation of any decreased tax liability. The group must make proper adjustments so that taxes and credits not taken into account in computing the limitation under section 38(c) are not taken into account in computing the member's share of the consolidated net income tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.) Also, the group may apportion all or a part of the $25,000 amount (or lesser amount if reduced by section 38(c)(3)) for any year to one or more members.

(ii) *Years included in computation.* For purposes of computing the limitation under this paragraph (d), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude—

(A) For carryovers, any years ending after the year to which the credit is carried; and

(B) For carrybacks, any years ending after the year in which the credit arose.

(iii) *Subgroups and successors.* The SRLY subgroup principles under § 1.1502–21(c)(2) apply for purposes of this paragraph (d). The predecessor and successor principles under § 1.1502–21(f) also apply for purposes of this paragraph (d).

(iv) *Overlap with section 383.* The principles under § 1.1502–21(g) apply for purposes of this paragraph (d). For example, an overlap of paragraph (d) of this section and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (d) does not apply. See §§ 1.1502–21(g)(2)(ii)(A) and 1.383–1; see also § 1.1502–21(g)(4) (subgroup rules).

(3) *Effective date*—(i) *In general.* This paragraph (d) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998.

(A) *Contribution years.* Except as provided in paragraph (d)(4)(ii) of this section, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(B) *Special subgroup rule.* In the event that the principles of § 1.1502–21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying paragraph (d) of this section to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 38(c) limitation reduced by the aggregate of the member's or subgroup's section 38 credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of § 1.1502–21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)."

(ii) *Overlap rule.* Paragraph (d)(2)(iv) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (d)(2)(iv) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2085), applies and which results in a section 383 credit limitation shall constitute a section 383 event.

(4) *Optional effective date of January 1, 1997.* (i) For consolidated taxable years beginning on or after January 1, 1997, for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in lieu of paragraphs (c) and (e)(3) of this section (relating to the general business credit), § 1.1502–4(f)(3) and (g)(3) (relating to the foreign tax credit), the next to last sentence of § 1.1502–9A(a)(2), § 1.1502–9A(b)(1)(v) (relating to overall foreign losses), and § 1.1502–55(h)(4)(iii) (relating to the alternative minimum tax credit), a consolidated group may apply the corresponding provisions as they appear in 1998–1 C.B. 655 through 661 (see § 601.601(d)(2) of this chapter) (treating references in such corresponding provisions to §§ 1.1502–9(b)(1)(ii), (iii), and (iv) as references to §§ 1.1502–9(b)(1)(ii), (iii), and (iv)). Also, in the case of a consolidated return change of ownership that occurs on or after January 1, 1997, in a taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, a consolidated group may choose not to apply paragraph (e) of this section and § 1.1502–4(g) to taxable years ending after December 31, 1996. A consolidated group making the choices described in the two preceding sentences generally must apply all such corresponding provisions (including not applying paragraph (e) of this section and § 1.1502–4(g)) for all relevant years. However, a consolidated group making the election provided in § 1.1502–9A(b)(1)(vi) (electing not to apply § 1.1502–9A(b)(1)(v) to years beginning before January 1, 1998) may nevertheless choose to apply all such corresponding provisions referred to in this paragraph (d)(4)(i) other than the provision corresponding to § 1.1502–9A(b)(1)(v) for all relevant years.

(ii) If a consolidated group chooses to apply the corresponding provisions referred to in paragraph (d)(4)(i) of this section, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997, in determining a member's (or subgroup's) contributions to the consolidated section 38(c) limitation under this paragraph (d).

(5) *Example.* The following example illustrates the provisions of this paragraph (d):

Example. (i) Individual A owns all of the stock of P and T. P is the common parent of the P group. P acquires all the stock of T at the beginning of Year 2. T carries over an

unused section 38 general business credit from Year 1 of $100,000. The table in paragraph (i) of this Example shows the group's net consolidated income tax, consolidated tentative minimum tax, and consolidated net regular tax liabilities, and T's share of such taxes computed under the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100% allocation of any decreased tax liability, for Year 2. (The effects of the lower section 11 brackets are ignored, there are no other tax credits affecting a group amount or member's share, and $1,000s are omitted.)

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Year 2	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	$2,000	$1,200	$800
2. consolidated net regular tax	$700	$420	$280
3. consolidated alternative minimum taxable income	$4,000	$3,200	$800
4. consolidated tentative minimum tax	$800	$640	$160
5. consolidated net income tax	$800	$520	$280
6. greater of line 4 or 25% of (line 2 minus $25,000) for the group	$800		
7. consolidated §38(c) limitation (line 5 minus line 6)	$0		

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(ii) T's Year 1 is a SRLY with respect to the P group. See § 1.1502–1(f)(2)(ii). T did not undergo an ownership change giving rise to a section 383 credit limitation within 6 months of joining the P group. Thus, T's $100,000 general business credit arising in Year 1 is subject to a SRLY limitation in the P group. The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 2 may not exceed T's contribution to the consolidated section 38(c) limitation. For Year 2, the group determines the consolidated section 38(c) limitation by reference to consolidated tentative minimum tax for Year 2. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 2 equals its share of consolidated net income tax minus its share of consolidated tentative minimum tax. T's contribution is $280,000 minus $160,000, or $120,000. However, because the group has a consolidated section 38 limitation of zero, it may not include any of T's unused section 38 credits in the consolidated section 38 credits for Year 2.

(iii) The following table shows similar information for the group for Year 3:

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Year 3	Group	P's share of col. 1	T's share of col. 1
1. consolidated taxable income	$1,200	$1,500	$(300)
2. consolidated net regular tax	$420	$525	$(105)
3. consolidated alternative minimum taxable income	$1,500	$1,700	$(200)
4. consolidated tentative minimum tax	$300	$340	$(40)
5. consolidated net income tax	$420	$525	$(105)
6. greater of line 4 or 25% of (line 2 minus $25,000) for the group	$300		
7. consolidated §38(c) limitation (line 5 minus line 6)	$120		

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(iv) The amount of T's unused section 38 credits from Year 1 that are included in the consolidated section 38 credits for Year 3 may not exceed T's aggregate contribution to the consolidated section 38(c) limitation for Years 2 and 3. For Year 3, the group determines the consolidated section 38(c) limitation by reference to the consolidated tentative minimum tax for Year 3. Therefore, T's contribution to the consolidated section 38(c) limitation for Year 3 equals its share of consolidated net income tax minus its share of consolidated tentative minimum tax. Applying the principles of section 1552 and § 1.1502–33(d) (taking into account, for example, that T's positive earnings and profits adjustment under § 1.1502–33(d) reflects its losses actually absorbed by the group), T's contribution is $(105,000) minus $(40,000), or $(65,000). T's aggregate contributions to the consolidated section 38(c) limitation for Years 2 and 3 is $120,000 + $(65,000), or $55,000. The group may include $55,000 of T's Year 1 unused section 38 credits in its consolidated section 38 tax credit in Year 3.

(e) * * *

(3) *Special effective date.* This paragraph (e) applies only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See paragraph (d)(4) of this section for an optional effective date rule (generally making the rules of this paragraph (e) also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

§ 1.1502–3T [Removed]

Par. 3. Section 1.1502–3T is removed.

Par. 4. Section 1.1502–4 is amended by revising paragraphs (f)(3) and (g)(3) to read as follows:

§ 1.1502–4 Consolidated foreign tax credit.

* * * * *

(f) * * *

(3) *Limitation on unused foreign tax credit carryover or carryback from separate return limitation years.* Paragraphs (f)(1) and (2) of this section do not apply for consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. For consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998, a group shall include an unused foreign tax of a member arising in a SRLY without regard to the contribution of the member to consolidated tax liability for the consolidated return year. See also § 1.1502–3(d)(4) for an optional

effective date rule (generally making the rules of paragraphs (f)(1) and (2) of this section also inapplicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) for such year is on or before March 13, 1998).

(g)* * *

(3) *Special effective date for CRCO limitation.* Paragraphs (g)(1) and (2) of this section apply only to a consolidated return change of ownership that occurred during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998. See also § 1.1502–3(d)(4) for an optional effective date rule (generally making the rules of paragraph (g)(1) and (2) of this section also inapplicable if the consolidated return change of ownership occurred on or after January 1, 1997, and during a consolidated return year for which the due date of the income tax return (without extensions) is on or before March 13, 1998).

* * * * *

§ 1.1502–4T [Removed]

Par. 5. Section 1.1502–4T is removed.

Par. 6. Section 1.1502–21 is amended by revising paragraph (c)(2)(ix) to read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(c) * * *

(2) * * *

(ix) *Application to other than loss carryovers.* Paragraph (g) of this section and the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)" in this paragraph (c)(2) apply only to carryovers of net operating losses, net capital losses, and for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, to carryovers of credits described in section 383(a)(2). Accordingly, as the context may require, if another regulation references this section and such other regulation does not concern a carryover of net operating losses, net capital losses, or for taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000, carryovers of credits described in section 383(a)(2), then such reference does not include a reference to such paragraph or phrase.

* * * * *

Par. 7. Section 1.1502–55 is added to read as follows:

§ 1.1502–55 Computation of alternative minimum tax of consolidated groups.

(a) through (h)(3) [Reserved].

(h)(4) *Separate return year minimum tax credit.*

(i) and (ii) [Reserved].

(iii)(A) *Limitation on portion of separate return year minimum tax credit arising in separate return limitation years.* The aggregate of a member's minimum tax credits arising in SRLYs that are included in the consolidated minimum tax credits for all consolidated return years of the group may not exceed—

(*1*) The aggregate for all consolidated return years of the member's contributions to the consolidated section 53(c) limitation for each consolidated return year; reduced by

(*2*) The aggregate of the member's minimum tax credits arising and absorbed in all consolidated return years (whether or not absorbed by the member).

(B) *Computational rules*—(*1*) *Member's contribution to the consolidated section 53(c) limitation.* Except as provided in the special rule of paragraph (h)(4)(iii)(B)(*2*) of this section, a member's contribution to the consolidated section 53(c) limitation for a consolidated return year equals the member's share of the consolidated net regular tax liability minus its share of consolidated tentative minimum tax. The group computes the member's shares by applying to the respective consolidated amounts the principles of section 1552 and the percentage method under § 1.1502–33(d)(3), assuming a 100% allocation of any decreased tax liability. The group makes proper adjustments so that taxes and credits not taken into account in computing the limitation under section 53(c) are not taken into account in computing the member's share of the consolidated net regular tax, etc. (See, for example, the taxes described in section 26(b) that are disregarded in computing regular tax liability.)

(*2*) *Adjustment for year in which alternative minimum tax is paid.* For a consolidated return year for which consolidated tentative minimum tax is greater than consolidated regular tax liability, the group reduces the member's share of the consolidated tentative minimum tax by the member's share of the consolidated alternative minimum tax for the year. The group determines the member's share of consolidated alternative minimum tax for a year using the same method it uses to determine the member's share of the consolidated minimum tax credits for the year.

(*3*) *Years included in computation.* For purposes of computing the limitation under this paragraph (h)(4)(iii), the consolidated return years of the group include only those years, including the year to which a credit is carried, that the member has been continuously included in the group's consolidated return, but exclude any years after the year to which the credit is carried.

(*4*) *Subgroup principles.* The SRLY subgroup principles under § 1.1502–21(c)(2) apply for purposes of this paragraph (h)(4)(iii). The predecessor and successor principles under § 1.1502–21(f) also apply for purposes of this paragraph (h)(4)(iii).

(5) *Overlap with section 383.* The principles under § 1.1502–21(g) apply for purposes of this paragraph (h)(4)(iii). For example, an overlap of this paragraph (h)(4)(iii) and the application of section 383 with respect to a credit carryover occurs if a corporation becomes a member of a consolidated group (the SRLY event) within six months of the change date of an ownership change giving rise to a section 383 credit limitation with respect to that carryover (the section 383 event), with the result that the limitation of this paragraph (h)(4)(iii) does not apply. See §§ 1.1502–21(g)(2)(ii)(A) and 1.383–1; see also § 1.1502–21(g)(4) (subgroup rules).

(C) *Effective date*—(1) *In general.* This paragraph (h)(4)(iii) generally applies to consolidated return years for which the due date of the income tax return (without extensions) is after March 13, 1998. See § 1.1502–3(d)(4) for an optional effective date rule (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998).

(i) *Contribution years.* In general, a group does not take into account a consolidated taxable year for which the due date of the income tax return (without extensions) is on or before March 13, 1998, in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii). However, if a consolidated group chooses to apply the optional effective date rule, the consolidated group shall not take into account a consolidated taxable year beginning before January 1, 1997 in determining a member's (or subgroup's) contributions to the consolidated section 53(c) limitation under this paragraph (h)(4)(iii).

(ii) *Special subgroup rule.* In the event that the principles of § 1.1502–21(g)(1) do not apply to a particular credit carryover in the current group, then solely for purposes of applying this paragraph (h)(4)(iii) to determine the limitation with respect to that carryover and with respect to which the SRLY register (the aggregate of the member's or subgroup's contribution to consolidated section 53(c) limitation reduced by the aggregate of the member's or subgroup's minimum tax credits arising and absorbed in all consolidated return years) began in a taxable year for which the due date of the return is on or before May 25, 2000, the principles of § 1.1502–21(c)(2) shall be applied without regard to the phrase "or for a carryover that was subject to the overlap rule described in paragraph (g) of this section or § 1.1502–15(g) with respect to another group (the former group)."

(2) *Overlap rule.* Paragraph (h)(4)(iii)(B)(*5*) of this section (relating to overlap with section 383) applies to taxable years for which the due date (without extensions) of the consolidated return is after May 25, 2000. For purposes of paragraph (h)(4)(iii)(B)(*5*) of this section, only an ownership change to which section 383, as amended by the Tax Reform Act of 1986 (100 Stat. 2095), applies and which results in a section 383 credit limitation shall constitute a section 383 event. The optional effective date rule of § 1.1502–3(d)(4) (generally making this paragraph (h)(4)(iii) also applicable to a consolidated return year beginning on or after January 1, 1997, if the due date of the income tax return (without extensions) was on or before March 13, 1998) does not apply with respect to paragraph (h)(4)(iii)(B)(*5*) of this section (relating to the overlap rule).

§ 1.1502–55T [Removed]

Par. 8. Section 1.1502–55T is removed.

Par. 9. Section 1.1502–98 is amended by adding a sentence immediately following the first sentence to read as follows:

§ 1.1502–98 Coordination with section 383.

* * * For example, subgroups with respect to the carryover of general business credits, minimum tax credits, unused foreign tax, and net capital loss are determined by applying the principles of § 1.1502–91(d)(1). * * *

§ 1.1502–9A [Amended]

Par. 10. Section 1.1502–9A is amended as follows:

1. In paragraph (a)(2), the last sentence is amended by removing the language "1.1502–3T(c)(4)" and adding "1.1502–3(d)(4)" in its place.

2. In paragraph (b)(1)(v), the last sentence is amended by removing the language "1.1502–3T(c)(4)" and adding "1.1502–3(d)(4)" in its place.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 8, 2000.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–11901 Filed 5–24–00; 8:45 am]

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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: Temporary final rule.

SUMMARY: The Coast Guard is establishing 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: This rule is effective from 12 p.m. e.s.t. on June 29, 2000, until 12 p.m. e.s.t. on July 5, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–99–050 and are available for inspection or copying at room 205, of 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:

Regulatory Information

On February 7, 2000, we published a notice of proposed rulemaking (NPRM) entitled Temporary Regulations: OPSAIL 2000/International Naval Review 2000 (INR 2000), Port of New York/New Jersey in the **Federal Register** (65 FR 5833). On February 14, 2000, we published a correction to this NPRM entitled Temporary Regulations: OPSAIL 2000/International Naval Review 2000 (INR 2000), Port of New York/New Jersey in the **Federal Register** (65 FR 7333). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The U.S. Navy is sponsoring the International Naval Review. This event consists of the anchoring of approximately 50 U.S. 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 consists of a parade of sailing vessels from the Verrazano-Narrows Bridge north past a reviewing stand aboard the U.S.S. 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. These 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 rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard is establishing two regulated areas in New York Harbor that will be in effect from July 3–5, 2000. These two 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 11–13 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 Ambrose Channel Entrance Lighted Gong Buoy 1 (LLNR 34800) and Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805). Please see Chartlet I, depicting Regulated Area A, included with this Temporary final rule (TFR) for the convenience of the reader. This area is to be used as a staging area for vessels participating in the Parade of Tall Ships. This 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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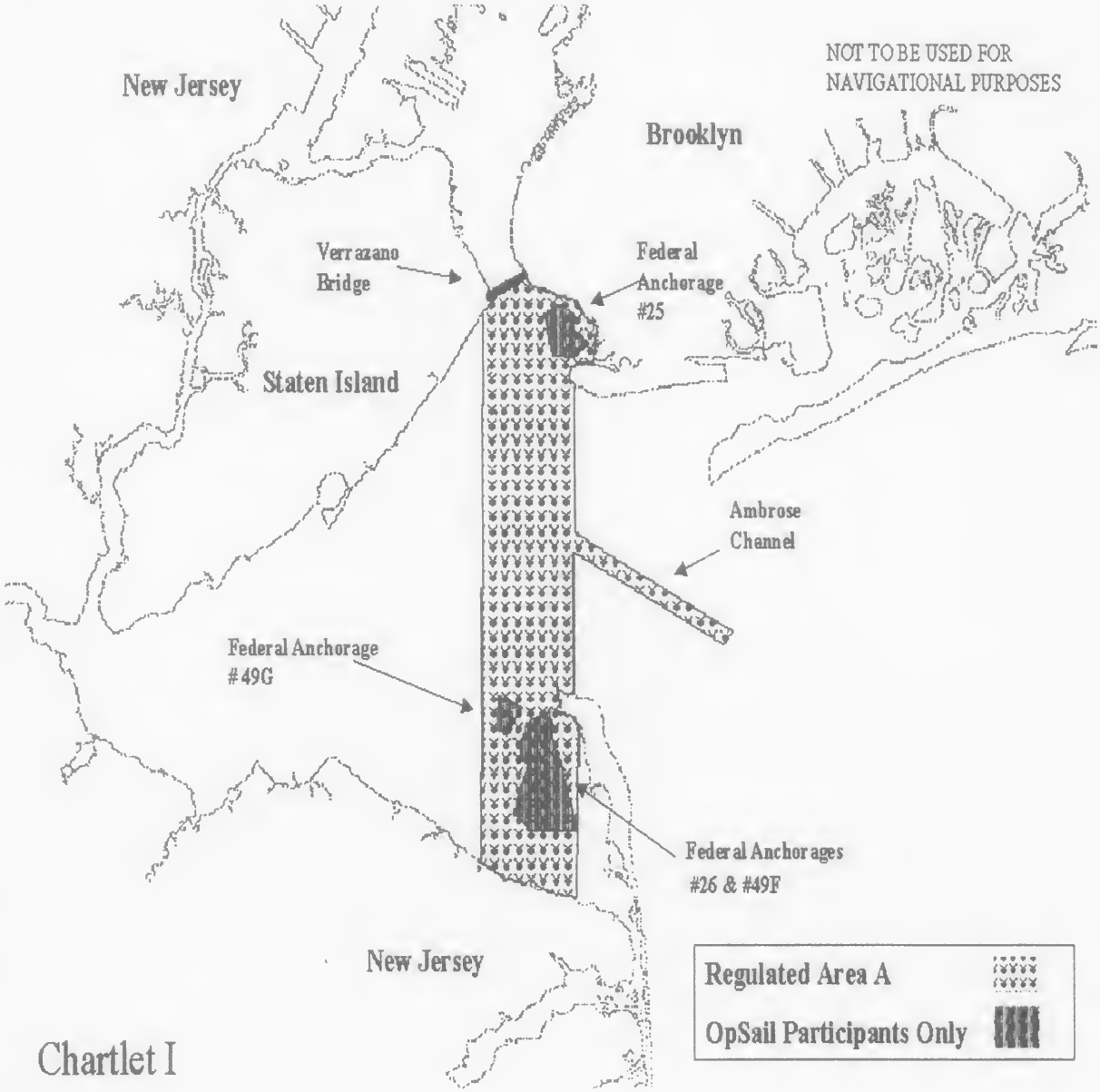
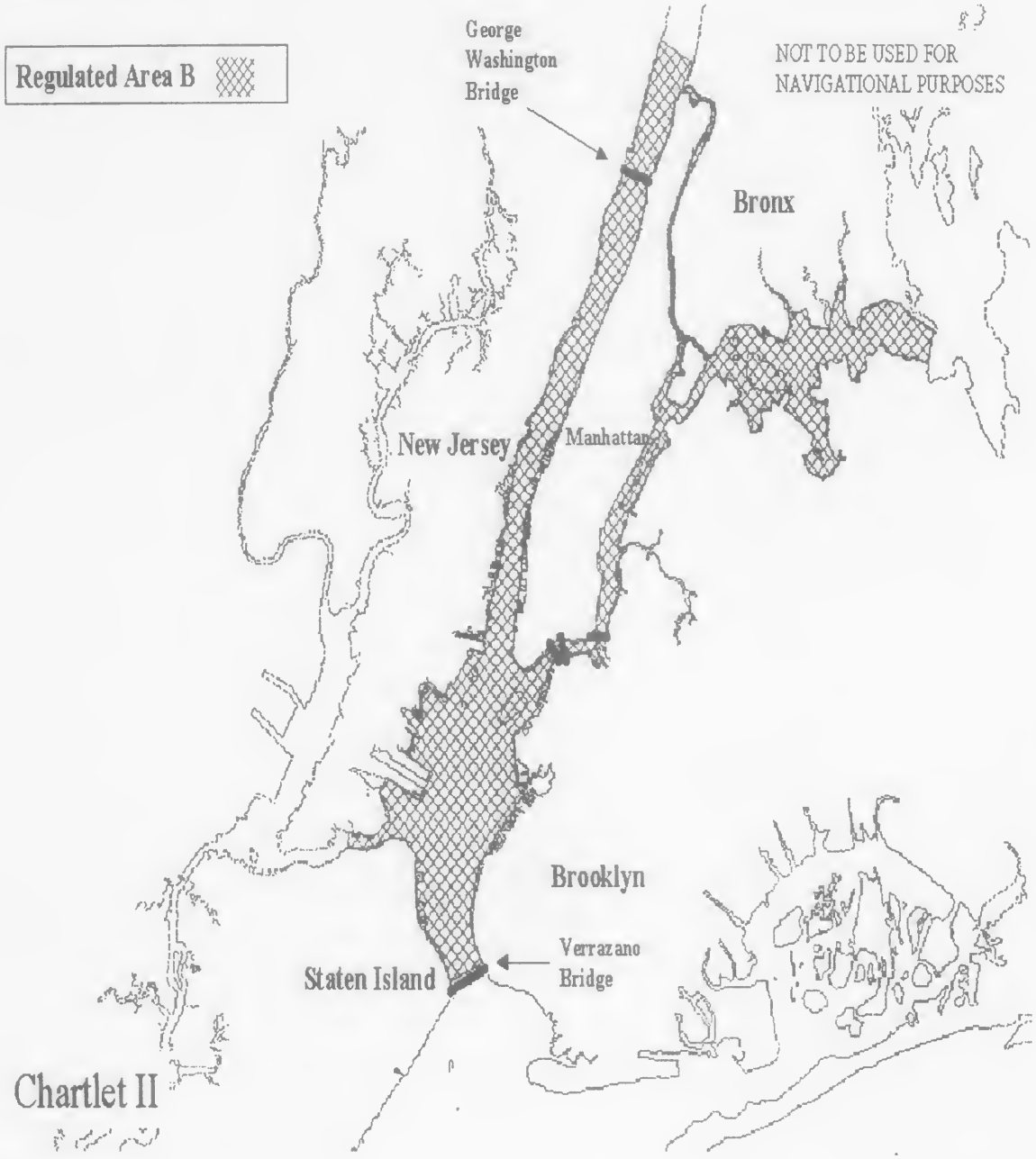


Chartlet I

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 Throgs Neck 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 Chartlet II, depicting Regulated Area B, included with this TFR for the convenience of the reader. This regulated area is for the International Naval Review, the Parade of Tall Ships, and the July 4th fireworks display. This regulated area is effective from 10 a.m., e.s.t. on July 3, 2000, until 10 a.m., e.s.t. on July 5, 2000.



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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.

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. 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-Narrows 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 11–13 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, east of Liberty Island, and in the Anchorage Channel north of the Verrazano-Narrows Bridge.

Anchorage Regulations

The Coast Guard is also establishing temporary Anchorage Regulations for participating OPSAIL 2000/INR 2000 ships and spectator craft. Some current Anchorage Regulations in 33 CFR 110.155 are temporarily suspended by this regulation and new Anchorage Grounds and regulations are being temporarily established. Chartlets I, III, and IV illustrate the anchorage grounds and are included for the convenience of the reader.

The 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 designates 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 p.m., e.s.t. on June 29, 2000, until 12 p.m., e.s.t. on July 5, 2000. The temporary Narrows Anchorage is being expanded to authorize a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage.

The Coast Guard also designates 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 designates 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 have a permit from the Captain of the Port New York. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

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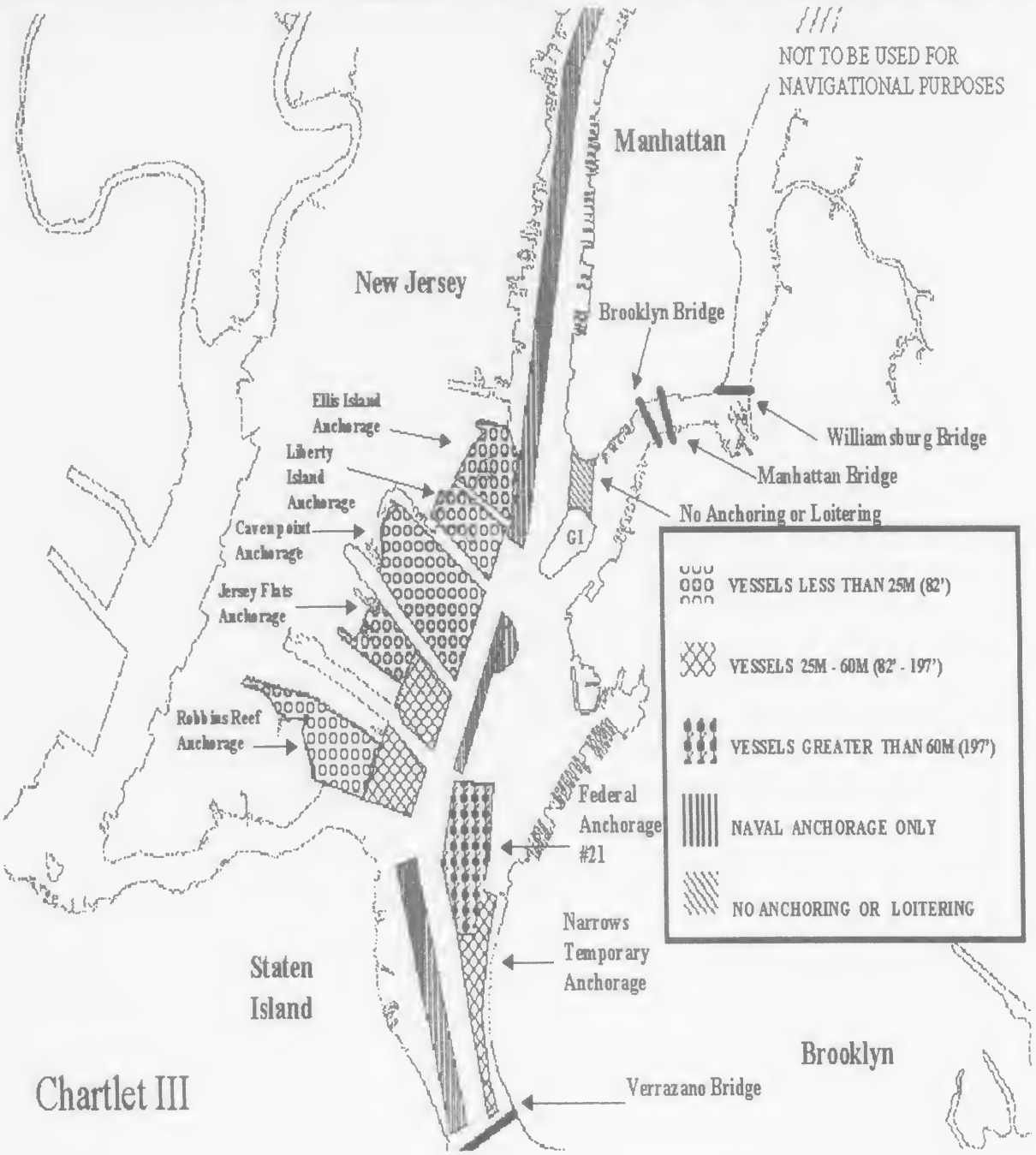
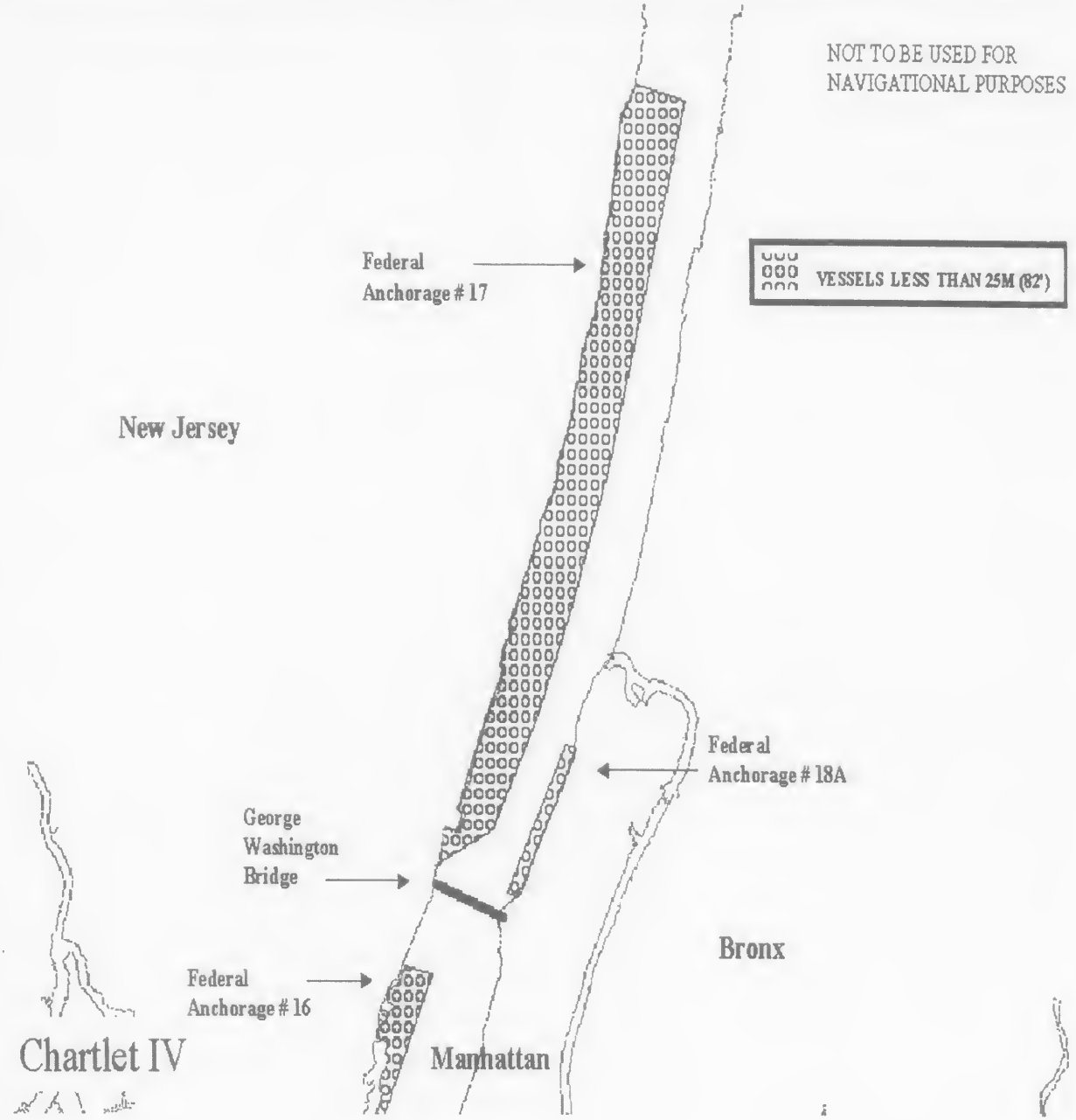

NOT TO BE USED FOR
NAVIGATIONAL PURPOSES
Manhattan
New Jersey
Brooklyn Bridge
Ellis Island
Anchorage
Liberty
Island
Anchorage
Cavenpoint
Anchorage
Jersey Flats
Anchorage
Robbins Reef
Anchorage
Williamsburg Bridge
Manhattan Bridge
No Anchoring or Loitering
GI
VESSELS LESS THAN 25M (82')
VESSELS 25M - 60M (82' - 197')
VESSELS GREATER THAN 60M (197')
NAVAL ANCHORAGE ONLY
NO ANCHORING OR LOITERING
Federal
Anchorage
#21
Narrows
Temporary
Anchorage
Staten
Island
Brooklyn
Verrazano Bridge
Chartlet III



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Security Zones

The Coast Guard is establishing 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 established for all waters within 500 yards of the U.S.S. 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. Numerous dignitaries who require Secret Service protection will be onboard both Navy vessels. Due to the dignitaries' attendance, security zones are required to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature to the Port of New York/New Jersey.

Discussion of Comments and Changes

We received no letters commenting on the proposed rule, but we did make two minor changes to it. The temporary Narrows Anchorage is being expanded to make a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage, and south of the current southern boundary of Federal Anchorage 21–C. This change increases the length of the temporary Narrows Anchorage by 1,450 yards. The increased anchorage length is necessary because it provides a greater area for spectator craft to anchor in. It is also easier to enforce as the western boundary is now aligned with the western boundary of Federal Anchorage No. 21–C. This will provide one straight boundary line to enforce as opposed to three boundary lines as originally planned. The expanded temporary Narrows Anchorage area will not have a negative impact on vessel traffic in the area because the expanded area does not include any navigable channels and it would not have been used by vessels. But it will have a positive impact because it provides space for five extra spectator craft that were alternate winners of the lottery drawing for anchorage spots in the area.

We changed section 110.155's introductory note to emphasize the mariners' need to exercise caution while using the temporarily designated anchorage areas for OPSAIL 2000/INR 2000. While we are not aware of any safety problems associated with these temporary anchorage areas, we can not ensure the anchor holding capability of each area nor that the bottoms are free from obstructions. Consequently, we are advising mariners to take appropriate precautions including using all means available to ensure their vessels are not dragging anchor. But based on past experience with these temporary anchorage areas, we have no reason to believe they are not adequate for their intended use.

Regulatory Evaluation

This 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 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 have been and 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.

One substantive change is being made to the Temporary final rule. The temporary Narrows Anchorage is being expanded to authorize a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage, and south of the current southern boundary of Federal Anchorage 21–C. We expect this change to have no adverse economic impact as it increases the size of the available spectator craft viewing area in the Narrows Temporary anchorage without closing any portions of any navigable channels. As originally published in the NPRM, this area would not have been used by any vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this 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 rule would not have a significant economic impact on a substantial number of small entities. This 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 June 29–July 5, 2000. These regulations will not have a significant economic impact on a substantial number of small entities for the following additional reasons: Although these regulations will 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 will 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.

One substantive change is being made to the Temporary final rule. The temporary Narrows Anchorage is being expanded to authorize a larger viewing area for spectator vessels between 25 meters (82 feet) and 60 meters (197 feet). The expanded area includes all waters of Anchorage Channel east of a line drawn between Gowanus Flats Lighted Bell Buoy 22 (LLNR 34945) and Bay Ridge Channel Lighted Buoy 2 (LLNR 36872) to the western boundary of the temporary Narrows Anchorage, and south of the current southern boundary of Federal Anchorage 21–C. This will have a positive impact on small entities as it provides space for five more spectator craft to be awarded permits to anchor here in the lottery drawing. As originally published in the NPRM, this area would not have been used by any vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. We provided explanations of the effect of these regulations on the Port of New York/New Jersey to approximately 15 small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 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 unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard considered the environmental impact of this rule, including the expansion of the Temporary Narrows Anchorage discussed in the Discussion of Comments and Changes section above, and concluded that, under figure 2–1, paragraph 34(f, g, and h), of Commandant Instruction M16475.1C, this 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 amends 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 Ambrose Channel Entrance Lighted Gong Buoy 1 (LLNR 34800) and Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805).

(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 Throgs Neck 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) Not withstanding 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 applicable 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

3. 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).

4. Effective June 29, 2000 through July 5, 2000, § 110.155 is temporarily amended as follows:

a. Add introductory text to the beginning of the section;

b. Add new paragraphs (c)(1)(ii), (c)(2)(ii), (c)(3)(ii);

c. Paragraphs (d)(1) through (d)(5), (d)(7) through (d)(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 (d)(12)(iv), (d)(13)(vi), (d)(14)(iv), (d)(15)(iii), and (d)(17) through (d)(20) are added;

d. Add new paragraph (e)(1)(iii);

e. The Note to paragraph (f)(1) introductory text is suspended;

f. Paragraphs (m)(2)(i) through (m)(2)(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 paragraphs (o) and (p).

The additions read as follows:

§ 110.155 Anchorage Grounds; Port of New York.

The designated anchorage grounds in this section have not been specially surveyed or inspected and navigational charts may not show all seabed obstructions or shallowest depths. Additionally, the anchorages are in areas of substantial currents. Mariners who use these temporary anchorages should take appropriate precautions, including using all means available to ensure your vessel is not dragging anchor. Finally, these are not special anchorage areas. Thus 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 hold a permit from the Captain of the Port New York on their vessel. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(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 (d)(17) 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 hold a permit from the Captain of the Port New York on their vessel. A Lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(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 hold a permit from the Captain of the Port New York on their vessel. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(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°38′03″ N, 074°03′02″ 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 hold a permit from the Captain of the Port New York on their vessel. A lottery was held to determine vessel anchorage locations and applications are no longer being accepted.

(ii) *Effective period.* Paragraph (o)(1) of this section is applicable 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 applicable from 6 a.m., e.s.t. on July 2, 2000, through 4 p.m., e.s.t. on July 4, 2000.

(p) *Temporary amendment applicable dates and times.* (1) From 12 noon on June 29, 2000 through 12 noon on July 5, 2000:

(i) The introductory text of this section is applicable.

(ii) The suspension of paragraphs (d)(1) through (5), (d)(10)(i), (n)(1), the introductory text of paragraph (d)(16), and the note to paragraph (f)(1) introductory text of this section is applicable.

(iii) Paragraphs (d)(10)(ii), (d)(17) through (20) and (p) of this section are applicable.

(2) The suspension of paragraphs (d)(7) through (9) of this section is applicable from 3 a.m., e.s.t. on July 3, 2000 through 12 noon on July 5, 2000.

(3) From 3 a.m., e.s.t. on July 3, 2000 through 6 a.m., e.s.t. on July 5, 2000:

(i) The suspension of paragraph (d)(12)(i) of this section is applicable.

(ii) Paragraphs (d)(11)(iii), (d)(12)(iii) and (iv), (d)(13)(vi), (d)(14)(iv), and (d)(15)(iii) of this section are applicable.

(4) From 6 a.m., e.s.t. on July 2, 2000 through 4 p.m., e.s.t. on July 4, 2000:

(i) The suspensions of paragraphs (m)(2)(i) and (ii), and (m)(3)(i) of this section are applicable.

(ii) Paragraphs (m)(2)(iii), (m)(3)(ii), and (e)(1)(iii) of this section are applicable.

(5) From 6 a.m., e.s.t. on July 2, 2000 through 12 noon on July 5, 2000, paragraph (o) of this section is applicable.

(6) From 12 noon on July 2, 2000 through 12 noon on July 5, 2000, paragraphs (c)(1)(ii), (c)(2)(ii), and (c)(3)(ii) of this section are applicable.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

5. 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.

6. 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 River and Upper New York Bay during the International Naval Review between the George Washington Bridge (river mile 11.0) and the Verrazano-Narrows Bridge.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced from 7 a.m., e.s.t. until 11 a.m., e.s.t. on July 4, 2000.

(2) *Security Zone B.* (i) *Location.* All waters within 500 yards of the U.S.S. John F. Kennedy (CV–67), in Federal Anchorage 21B.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced from 10 a.m., e.s.t. until 5 p.m., e.s.t. on July 4, 2000.

(b) *Effective period.* This section is applicable from 7 a.m., e.s.t. on July 4, 2000, until 5 p.m., e.s.t. on July 4, 2000.

(c) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the 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.

Dated: May 4, 2000.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–12641 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI 00–015]

RIN 2115–AA97

Safety Zone: OpSail Miami 2000, Port of Miami.

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations in the Port of Miami for OpSail Miami 2000 activities. This action is necessary to provide for the safety of life and property on navigable waters during OpSail Miami 2000. This action will restrict vessel traffic in portions of the Port of Miami.

DATES: This rule is effective from 9 p.m. Eastern Daylight Time (EDT) on June 9, 2000 and terminates at 4 p.m. EDT on June 10, 2000.

ADDRESSES: Coast Guard Marine Safety Office Miami maintains the public docket for this rulemaking. Documents indicated in this preamble as being available in the docket, are available for inspection or copying at room 201, Coast Guard Marine Safety Office Miami, between 8 a.m. and 3 p.m., EDT Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Boudrow, Port Management and Response Department, Coast Guard Marine Safety Office Miami, (305) 535–8705.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 17, 1999, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM), and on March 17, 2000, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled OPSAIL 2000 in the **Federal Register** (64 FR 70650 and 65 FR 14502). No comments were received during either comment period. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Updated information regarding the fireworks display was recently received from the sponsor. Further, the proposed rule was well publicized in the ANPRM and the NPRM, and the event will be further publicized throughout the local community by the event sponsor.

Background and Purpose

The temporary regulations are for OpSail Miami 2000 events scheduled to be held in portions of the Port of Miami over the period of June 6–10, 2000. This rule will provide for the safety of life and property on navigable waters during OpSail Miami 2000 events on June 9, 2000 and June 10, 2000.

Discussion of Rule

OpSail Miami 2000, Inc., is sponsoring OpSail Miami 2000 activities which consist of the arrival, display, and departure parade of numerous large U. S. and foreign flagged sail vessels. A fireworks display is planned for the evening prior to the final day of the sail vessel visit. Currently, approximately 20 Class A (175 feet or larger in length) and 20 smaller Class B (100 feet up to 175 feet) and C (up to 100 feet) sail vessels are expected to participate in OpSail Miami 2000.

Participant sail vessels will begin arriving in the Port of Miami on June 6, 2000 and will moor alongside Dodge Island within the Port of Miami. These vessels will be open to the public during certain hours between June 7 and June 9, 2000. On June 9, 2000, fireworks displays will be conducted commencing approximately 9:00 p.m. EDT from the orchestra vessel POINT COUNTERPOINT II, a barge anchored in the turning basin at the west end of Main Channel, and the Watson Island bridge structure. On June 10, 2000, the sail vessels will make their departure from the Port of Miami in a parade commencing approximately 12 noon EDT and ending approximately 4 p.m. EDT. Participant sail vessels will proceed under auxiliary power from their moorings to the turning basin at the west end of the Main Channel. From the turning basin, they will proceed under auxiliary power in 300 to 500 yard intervals in a ocean-bound direction along the Main Channel, thence along Government Cut, thence along Bar Cut, thence along Outer Bar Cut, to the vicinity of Miami Lighted Bouy M (Light List Number (LLNR) 10455–895), located at 25 degrees, 46.0 minutes North latitude, 080 degrees, 05.0 minutes West longitude. The area of Miami Lighted Buoy M is the termination point for pilotage. As pilots disembark their vessels, the sail vessels will parade northward off the coastline, under sail, to the parade termination point in the general vicinity of the entrance to Port Everglades, Florida.

Waterborne spectator areas have been designated by the event sponsor to be on either side of Bar Cut and Outer Bar Cut in the open ocean. These areas will be delineated by lines of marker floats placed by the sponsor. The marker floats will be round balls, orange in color, and spaced approximately 200 yards apart. They will be placed 100 yards out from the aids to navigation that mark each side of the channel. Spectator craft will be expected to remain behind the marker float lines for the duration of the parade.

Because of the number of the sail vessels, fireworks displays, and the large number of spectator watercraft expected during the parade, the Coast Guard is establishing regulations for the creation of temporary safety zones and vessel movement controls in portions of the Port of Miami and its channels affected by these events. The regulations will be in effect on June 9 and 10, 2000. The vessel congestion due to the large number of participant and spectator vessels poses a significant threat to the safety of life and property. The Coast Guard has determined this rulemaking is necessary to ensure the safety of life and property on the navigable waters of the United States within portions of the Port of Miami affected by this event.

Regulated Areas

The Coast Guard is establishing temporary safety zones for fireworks displays on June 9, 2000 and the Parade of Sail on June 10, 2000. The safety zone for June 9, 2000 shall include all waters within 100 yards of the orchestra vessel

POINT COUNTERPOINT II, and all waters bounded on the north by the Venetian Causeway West drawbridge, a line drawn from the southwest corner of Biscayne Island to the northwest corner of Watson Island, and a line drawn from the southwest corner of Watson Island near the seaplane ramp to the northeast corner of the American Airlines Arena property water frontage.

The safety zone for the June 10, 2000, Parade of Sail shall include all waters in the Port of Miami within the turning basin at the west end of Main Channel bounded by the bridges connecting Dodge Island and Watson Island to the mainland, the Main Channel, Lummus Island Cut east of a line drawn northward from the west end of Fisher Island, Government Cut, Bar Cut, Outer Bar Cut, and 100 yards on either side of the Bar Cut and Outer Bar Cut short range navigational aids, seaward to Miami Lighted Buoy M (LLNR 10455–895).

Entry into these safety zones by non-participating vessels will be prohibited. The Coast Guard expects many spectator craft for this millennium event. These craft will be allowed to view the Parade of Sail vessels from viewing areas on either side of Bar Cut and Outer Bar Cut. These areas will delineated by marker floats placed by the sponsor of the event.

Regulatory Evaluation

This 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).

Although the rule prohibits all non-parade related traffic in the area of the temporary safety zone on Saturday, June 10, 2000, the effect of this regulation will not be significant for the following reasons: the regulation will be in effect for less than 6 hours; the maritime community will receive extensive advance notices through Local Notices to Mariners, facsimile, and marine information broadcasts, maritime association meetings, and Miami area newspapers; and specific viewing areas will be marked for spectator vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. We received no comments on this rule from small entities. However, this rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit those portions of the Port of Miami during the two periods of safety zone enforcement. 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 Miami, the periods of the regulatory enforcement will be of short duration. Before the effective periods, the Coast Guard will make notifications to the public via mailings, facsimilies, the Local Notice to Mariners, and use of the sponsor Internet site. In addition, OpSail Miami 2000, Inc., the sponsoring organization, is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will 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 Joe Boudrow, Coast Guard Marine Safety Office Miami at (305) 535–8705.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 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 rule would not impose on unfunded mandate.

Taking of Private Property

This 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 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

The Coast Guard has analyzed this 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 action and have determined under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during the event, this rule is intended to minimize environmental impacts of increased vessel traffic during the parade of sail.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Temporary Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—[AMENDED]

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, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T 07–015 is added to read as follows:

§ 165.T07–015 Safety zones; Miami, Florida.

(a) *Regulated areas.* (1) *Fireworks area.* (i) *Location.* All waters within 100 yards of the M/V POINT COUNTERPOINT II; and, all waters within an area bounded on the north by the Venetian Causeway West drawbridge, a line drawn from the southwest corner of Biscayne Island to the northwest corner of Watson Island, and a line drawn from the southwest corner of Watson Island near the seaplane ramp to the northeast corner of the American Airlines Arena property water frontage.

(ii) *Regulations.* In accordance with the general regulations in 165.23 of this part, no vessel shall enter the fireworks display fallout area during the enforcement period unless otherwise authorized by the U.S. Coast Guard Captain of the Port.

(iii) *Enforcement period.* This section becomes effective at 9 p.m. Eastern Daylight Time (EDT) and terminates at 11 p.m. EDT on June 9, 2000, unless terminated earlier by the U. S. Coast Guard Captain of the Port.

(2) *Parade of sail area.*—(i) *Location.* A temporary safety zone is established to include all waters in the Port of Miami within the turning basin at the west end of Main Channel bounded by the bridges connecting Dodge and Watson Islands with the mainland, Main Channel, Lummus Island Cut east of a line extending northward from the west end of Fisher Island, Government Cut, Bar Cut, Outer Bar Cut, and 100 yards on either side of the Bar Cut and Outer Bar Cut short range navigational aids, seaward to Miami Lighted Buoy M (LLNR 10455–895).

(ii) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited to all non-parade related vessels without the prior permission of the U. S. Coast Guard Captain of the Port.

(iii) *Enforcement period.* This section becomes effective at 10 a.m. EDT and terminates at 4 p.m. EDT on June 10, 2000, unless terminated earlier by the U.S. Coast Guard Captain of the Port.

(b) *Dates.* This section becomes effective at 9 p.m., EDT on June 9, 2000, and terminates at 4 p.m., EDT on June 10, 2000.

Dated: May 17, 2000.

L.J. Bowling,

Captain, U. S. Coast Guard, Captain of the Port, Miami Zone.

[FR Doc. 00–13195 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR 76–7291; FRL–6601–1]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to procedures described in the January 19, 1989 **Federal Register**, the Environmental Protection Agency (EPA or we) recently approved a minor State Implementation Plan (SIP) revision submitted by the Oregon Department of Environmental Quality (ODEQ). This submittal includes the following changes to the Oregon Administrative Rules (OAR) 340-028–0110 (Definitions): a revision of the definition of Volatile Organic Compounds (VOC), typographical corrections, updated reference dates, and the renumbering of several definitions. The VOC definition was revised to delist parachlorobenzotriflouride (PCBTF) and cyclic, branched, or linear completely methylated siloxanes from the definition of VOC. This document lists the revision we approved and incorporates the relevant material into the Code of Federal Regulations.

DATES: This rule is effective May 25, 2000.

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

FOR FURTHER INFORMATION CONTACT: Debra Suzuki, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0985.

SUPPLEMENTARY INFORMATION: We approved the following minor SIP revision request under section 110(a) of the Clean Air Act (Act):

State	Subject matter	Date of submission	Date of approval
OR	Definitions: Revised the definition of VOC (delist parachlorobenzotriflouride (PCBTF) and cyclic, branched, or linear completely methylated siloxanes) consistent with changes in the federal definition, made typographical corrections, updated reference dates, and incorporated the renumbering of several definitions.	12–3–98	6–16–99

We took no action on the definitions relating to the Compliance Assurance Monitoring (CAM) Rule and on Tables 1 through 3. Please note that since these SIP revisions were adopted by the state, other modifications to Oregon's rules may have been adopted by the Environmental Quality Commission and submitted to EPA for approval (*e.g.* the rule recodification package). Approval of this SIP revision does not rescind any local rule amendments that were subsequently filed and submitted. We determined that this SIP revision complies with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of this revision, we concluded that conducting notice-and-comment rulemaking prior to approving this

revision would have been "unnecessary and contrary to the public interest", and therefore, was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). This SIP approval became final and effective on the date of EPA approval listed above.

I. Administrative Requirements

A. Executive Order 12866

A. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule became effective on June 16, 1999.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 24, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

B. Oregon Notice Provision

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

C. Oregon Audit Privilege

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Volatile organic compounds.

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

Dated: March 16, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

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

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (131) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(131) On December 3, 1998, the Director of the Oregon Department of Environmental Quality (ODEQ) submitted a revision to the definition section of the Oregon Administrative Rules (OAR), as effective October 14, 1998.

(i) Incorporation by reference.

(A) OAR 340–028–0110, as effective October 14, 1998, except for the following: (16) Capture system, (25) Continuous compliance determination method, (27) Control device, (29) Data, (39)(b) Emission Limitation and Emission Standard, (47) Exceedance, (48) Excursion, (55) Inherent process equipment, (67) Monitoring, (86) Pollutant-specific emissions unit, (88) Predictive emission monitoring system (PEMS), Table 1, Table 2, and Table 3.

(B) Remove the following provision from the current incorporation by reference: OAR 340–028-0110, as effective October 6, 1995, except for Table 1, Table 2, and Table 3.

[FR Doc. 00–13070 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6704–7]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Minnesota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Minnesota's changes to their hazardous waste program will take effect as provided below. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on August 23, 2000 unless EPA receives adverse written comment by June 26, 2000. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments referring to Docket Number Minnesota ARA 8, to Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. We must receive your comments by June 26, 2000. You can view and copy Minnesota's application from 9:00 am to 4:00 pm at the following addresses: Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Nathan Cooley at (651) 297–7544; or EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Minnesota Final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Minnesota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Minnesota has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA maintains independent authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and require monitoring, tests, analyses or reports and to enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which Minnesota is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the state program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives appropriate comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the state program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Minnesota Previously Been Authorized For?

Minnesota initially received Final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199), on April 24, 1989, effective June 23, 1989 (54 FR 16361), amended June 28, 1989 (54 FR 27170), on June 15, 1990, effective August 14, 1990 (55 FR 24232), on June 24, 1991, effective August 23, 1991 (56 FR 28709), on March 19, 1992, effective May 18, 1992 (57 FR 9501), on March 17, 1993, effective May 17, 1993 (58 FR 14321), and on January 20, 1994, effective March 21, 1994 (59 FR 2998).

G. What Changes Are We Authorizing With Today's Action?

On March 7, 2000, Minnesota submitted a final complete program revision application, seeking authorization of program changes in accordance with 40 CFR 271.21. EPA reviewed Minnesota's application, and we now make an immediate final decision, subject to receipt of adverse written comments that oppose this action, that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Minnesota Final authorization for the following program changes:

Description of Federal requirement	**Federal Register** date and page *[and/or RCHA statutory authority]*	Analogous State authority
Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) Checklist 81 as amended Checklist 81.1.	November 2, 1990, 55 FR 46354 ..... December 17, 1990, 55 FR 51707	Minnesota Rules 7045.0135, 7045.0139; effective March 1, 1994.
Wood Preserving Listings Checklist 82	December 6, 1990, 55 FR 50450	Minnesota Rules 7045.0020, 7045.0120, 7045.0135, 7045.0139, 7045.0141, 7045.0145, 7045.0292, 7045.0528, 7045.0541, 7045.0552, 7045.0623, 7045.0628, 7045.0644; effective January 31, 1994, as amended October 2, 1995.
Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment Checklist 87.	April 26, 1991, 56 FR 19290	Minnesota Rules 7001.0625, 7001.0626, 7045.0547, 7045.0548, 7045.0564, 7045.0584, 7045.0647, 7045.0648; effective March 1, 1994.
Revision to F037 and F038 Listings Checklist 89.	May 13, 1991, 56 FR 21955	Minnesota Rules 7045.0135 effective March 1, 1994.
Wood Preserving Listing: Technical Correction Checklist 92.	July 1, 1991, 56 FR 30192	Minnesota Rules 7001.0623 7045.0120, 7045.0145, 7045.0292, 7045.0541, 7045.0644; effective January 31, 1994 as amended October 2, 1995.
Second Correction to the Third Third Land Disposal Restrictions Checklist 102.	March 6, 1992, 57 FR 8086	Minnesota Rules 7045.0458, 7045.0564, 7045.1305, 7045.1355, 7045.1360; effective March 1, 1994.
Hazardous Debris Case-by-Case Capacity Variance Checklist 103.	May 15, 1992, 57 FR 20766	Minnesota Rules 7045.1335; effective March 1, 1994.
Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance Checklist 106.	June 26, 1992, 57 FR 28628	Minnesota Rules 7045.1335; effective March 1, 1994.
Wood Preserving: Amendments to Listings and Technical Requirements Checklist 120.	December 24, 1992, 57 FR 61492	Minnesota Rules 7045.0541, 7045.0644; effective January 31, 1994, as amended October 2, 1995.

H. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, we consider the following State requirement to be more stringent than the Federal requirements:

- Minnesota Rules 7001.0623, because the State does not allow for an exemption to Subpart F of 40 CFR part 264, as provided for in 40 CFR 270.26(b), making the State requirements more stringent.

More stringent rules are part of Minnesota's authorized program and are Federally enforceable.

Broader-in-scope requirements are not part of the authorized program and EPA cannot enforce them. Although you must comply with these requirements in accordance with state law, they are not RCRA requirements. There are no broader-in-scope provisions in these changes.

I. Who Handles Permits After This Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized, and will administer the permits that it issues. EPA will continue to administer any RCRA hazardous waste permits, or portions of permits, that we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country within the State, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of the following Indian Reservations, located within or abutting the State of Minnesota:
a. Bois Forte Indian Reservation
b. Fond Du Lac Indian Reservation
c. Grand Portage Indian Reservation
d. Leech Lake Indian Reservation
e. Lower Sioux Indian Reservation
f. Mille Lacs Indian Reservation
g. Prairie Island Indian Reservation
h. Red Lake Indian Reservation
i. Shakopee Mdewankanton Indian Reservation
j. Upper Sioux Indian Reservation
k. White Earth Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect in Indian country where EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Minnesota's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. The authorized Minnesota RCRA program was incorporated by reference into 40 CFR part 272 on May 15, 1989, effective July 14, 1989 (54 FR 20851). Minnesota's Incorporation by Reference was amended on March 16, 1990, effective May 15, 1990 (55 FR 9880), on October 15, 1992, effective December 14, 1992 (57 FR 47265), and on September 6, 1994, effective November 7, 1994 (59 FR 45986).

We reserve the amendment of 40 CFR part 272, subpart Y for this authorization of Minnesota's program changes until a later date.

L. Regulatory Analysis and Notices

Unfunded Mandates Reform Act

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, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Minnesota program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste

generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes, for the purpose of RCRA section 3006, those existing State requirements.

Submission to Congress and the Comptroller General

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

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves Minnesota's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in Minnesota in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a State program.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Minnesota is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 3, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5.

[FR Doc. 00–12953 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FPMR Amendment H–205]

RIN 3090–AF39

Disposition of Excess Personal Property; Correction

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error contained in a final rule appearing in Part III of the **Federal Register** of Tuesday, May 16, 2000 (64 FR 31218). The rule revised the Federal Property Management Regulations (FPMR) by moving coverage on the disposition of excess personal property into the Federal Management Regulation (FMR) and adding a cross-reference to the FPMR to direct readers to the coverage in the FMR.

EFFECTIVE DATE: May 30, 2000.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

SUPPLEMENTARY INFORMATION: In rule document 00–11921 beginning on page 31218 in the issue of Tuesday, May 16, 2000, make the following correction:

§ 102–36.170 [Corrected]

1. On page 31225, in the first column, in the second line, "in" should read "is".

Dated: May 19, 2000.

Sharon A. Kiser,

Federal Acquisition Policy Division, Office of Governmentwide Policy.

[FR Doc. 00–13147 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–866; MM Docket No. 90–466; RM–7327, RM–7987, RM–7988, RM–8705].

Radio Broadcasting Services; Pleasanton, Bandera, Hondo, Hollywood Park, and Dilley, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission dismisses as moot the Application for Review filed by Reding Broadcasting Company, requesting reconsideration of a dismissal of its proposal to substitute Channel 252A for Channel 253C2 at Pleasanton, TX, substitute Channel 253A for Channel 290A at Hondo, TX and Channel 252A for Channel 276A at Bandera, TX. Petitioner received requested relief in MM Docket No. 98–55.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, MM Docket No. 90–466 adopted April 12, 2000, and released April 14, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13138 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–945; MM Docket No. 99–83; RM–9500; RM–9722]

Radio Broadcasting Services; Saranac Lake and Westport, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Dana Puopolo, allots Channel 296A to Saranac Lake, NY, as the community's third local FM service. *See* 64 FR 14422, March 25, 1999. At the request of Westport Broadcasting, the Commission substitutes Channel 275A for Channel 273A at Westport, NY, and modifies the license of Station WCLX to specify the alternate Class A channel. Channel 296A can be allotted to Saranac Lake in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, without the imposition of a site restriction, at coordinates 44–19–48 NL; 74–08–00 WL. Channel 275A can be allotted to Westport in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 4.6 kilometers (2.9 miles) northeast, at coordinates 44–13–16 NL; 73–24–42 WL, to accommodate WB's desired transmitter site. Both Saranac Lake and Westport are located within 320 kilometers (200 miles) of the U.S.-Canadian border and thus Canadian concurrence in the allotments is required. *See* **SUPPLEMENTARY INFORMATION**.

DATES: Effective June 12, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–83, adopted April 19, 2000, and released April 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. In addition, Channel 296A at Saranac Lake will be short-spaced to Station CITE–FM, Channel 297C1, Montreal, Quebec,

Canada, and Channel 275A at Westport will be short-spaced to Station CITE1, Channel 274C1, Sherbrooke, Quebec, Canada. Therefore, concurrence in these allotments, as specially-negotiated short-spaced allotments, was requested in October, 1999, but has not yet been received. However, rather than delay any further the opportunity to file applications for these channels, we will allot Channel 296A at Saranac Lake and Channel 275A at Westport at this time. If a construction permit is granted prior to the receipt of formal concurrence in the allotment by the Canadian Government, the construction permit will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast Agreement." A filing window for Channel 296A at Saranac Lake will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 296A at Saranac Lake, and removing Channel 273A and adding Channel 275A at Westport.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13137 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–920; MM Docket No. 99–103; RM–9506; RM–9829]

Radio Broadcasting Services; Bayfield, CO and Teec Nos Pos, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A, in lieu of previously proposed Channel 237A, to Bayfield, Colorado, as an additional local FM transmission service at that community in response to a petition for rule making filed by Mountain West Broadcasting (RM–9506). *See* 64 FR 17141, April 8, 1999. Additionally, Channel 237C1 is allotted to Teec Nos Pos, Arizona, as that community's first local aural transmission service, in response to a counterproposal filed on behalf of Voice Ministries of Farmington, Inc. (RM–9829). Coordinates used for Channel 223A at Bayfield, Colorado, are 37–07–29 NL; 107–34–10 WL; coordinates used for Channel 237C1 at Teec Nos Pos, Arizona, are 36–54–36 NL; 109–06–00 WL.

DATES: Effective June 9, 2000. A filing window period for Channel 223A at Bayfield, Colorado, and for Channel 237C1 at Teec Nos Pos, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for those channels will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–103, adopted April 19, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as foflows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Teec Nos Pos, Channel 237C1.

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Bayfield, Channel 223A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13135 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 000519147–0147–01; I.D. 051800C]

RIN 0648–AO22

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is closing, for a 2 week period, all inshore waters and offshore waters out to 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. (approximately Tybee Island, Georgia) and 34° N. lat. (approximately Wilmington Beach, North Carolina) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 19, 2000 through 11:59 p.m. (local time) on June 2, 2000.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, (ph.

727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder, (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762–4591 or fax (228) 769–8699.

SUPPLEMENTARY INFORMATION:

Prohibitions to taking sea turtles are governed by regulations implementing the Endangered Species Act at 50 CFR parts 222 and 223. The incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713 September 14, 1995), NMFS established regulations to provide protection for leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback Conservation Zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on May 12, 2000, along the South Carolina coast documented 14 leatherback turtles over a total survey trackline of approximately 39.7 nm (73.6 km). The survey trackline was flown in a northeasterly direction commencing approximately 1 nm (1.9 km) offshore of Bull's Island (32°55′ N. lat., 080°39′ W. long.) and terminating approximately 1 nm (1.9 km) off of Winyah Bay (33°13′ N. lat., 080°11′ W. long.). A replicate survey conducted on May 16, 2000 sighted 12 leatherbacks in 46 nm (85.2 km) of trackline. This survey was flown in a northeasterly direction commencing approximately 1 nm (1.9 km) offshore of Isle of Palms (32°46′ N. lat., 080°46′ W. long.) and terminating approximately 1 nm (1.9 km) offshore of North Island (33°15′ N. lat., 080°11′ W. long.). Fishing effort appeared heavy at the time of the survey. One hundred and sixteen vessels (77 underway shrimp trawlers) were observed during the survey of the South Carolina coast.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 34° N. lat., within the Leatherback Conservation Zone are closed to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget (OMB) control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Notice and opportunity to comment on the leatherback closure procedures was provided through the rulemaking establishing the closure procedures (60 FR 25663, May 12, 1995).

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this rule for 30 days. It would be contrary to the public interest to delay this action because such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making the rule effective May 19, 2000 through June 2, 2000. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727) 570–5312 for updated area closure information. As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et. seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13092 Filed 5–19–00; 4:55 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991108298–0145–02; I.D. 092199C]

RIN 0648–AL88

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales; Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend portions of the regulations

implementing the equipment and operational requirements in the Community Development Quota (CDQ) fisheries for catch weight measurement, observer sampling stations, and observer transmission of data. After the first year of requiring scales and observer sampling stations on specified vessels participating in the CDQ fisheries, NMFS has identified aspects of the requirements that need further refinement and correction for effective implementation. This action is intended to effect those refinements.

DATES: Effective June 26, 2000.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228. A copy of the September 9, 1997, environmental assessment prepared for the Multispecies Community Development Quota (MS CDQ) Program can be obtained from the same address.

Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Lori Gravel, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Comments sent by e-mail or the Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907–586–7228 or alan.kinsolving@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area according to the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs at 50 CFR part 679 and subpart H of 50 CFR part 600 govern fishing by U.S. vessels. Equipment and operational requirements for catch weight measurement appear at 50 CFR 679.28 and equipment and operational requirements for transmission of observer data appear at 50 CFR 679.50.

This final rule makes numerous minor revisions to §§ 679.28 and 679.32. NMFS published a proposed rule to implement these revisions in the **Federal Register** on December 2, 1999 (64 FR 67555). The preamble to the proposed rule contains a full description of the revisions and their justification, which is not repeated here. The proposed rule also provided the public with a 30-day review and comment period. NMFS received no comments on the proposed rule. Although some editorial changes were made to the regulatory text in this final rule, no substantive changes were made from the proposed regulatory text. Though this action results in some substantive regulatory revisions, most changes are technical edits needed to clarify existing regulations. The substantive changes that alter existing regulations will:

1. Explicitly allow NMFS staff to inspect and approve scales for use at-sea;
2. Allow the use of scale approval stickers or seals in lieu of maintaining a scale inspection report on board the vessel;
3. Relax the annual certification requirements for the test weights that must accompany an approved observer platform scale;
4. Allow scale manufacturers to use a computer-generated check number instead of a physical seal to protect adjustable scale components from fraudulent tampering;
5. Relax the requirements for the daily printout of haul information for a vessel that must weigh all catch;
6. Modify the requirements for visibility of the display on a total-catch weighing scale;
7. Require operators of trawl catcher/processors to ensure that no removal of fish can take place between the bin and observer sampling station without the removal being visible to the observer;
8. Define "tally area" and "collection point" for longline catcher/processors and specify requirements for their dimensions, location, and construction;
9. Define the phrase "clear and unobstructed passage," as used in the current regulations;
10. Make the minimum work space requirements for the observer sampling station more flexible by giving a minimum area criterion in lieu of specific minimum station length and width requirements;
11. Require that observer sampling station scales be mounted with the platform (i.e., the weighing surface) no more than 0.7 meter above the floor;
12. Require that trawl catcher/processors provide at least 1 meter of belt space downstream from the total-catch weighing scale for the observer's use when processing samples; and
13. Require that catcher/processors and motherships obtain, install, and maintain NMFS-provided data-entry software if participating in CDQ fisheries.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act of 1996 requires that NMFS prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule. This action revises the requirements for observer sampling stations, at-sea scales, and transmission of observer data. This action affects all small entities that are required to install and maintain NMFS-approved scales or observer sampling stations. Affected entities must comply with the regulations concerning at-sea scales and observer sampling stations at § 679.28 and the regulations concerning the transmission of observer data in the CDQ program at § 679.32.

Because this rule makes changes to the at-sea scales and observer sampling station programs, it is possible that a sampling station or scale that was acceptable when inspected in 1999 will not be acceptable now. NMFS recommends that small entities required to provide NMFS-approved scales or observer sampling stations contact Alan Kinsolving (see **ADDRESSES**) prior to their next required scale or observer sampling station inspection to ensure that necessary modifications are made.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA that have been approved by OMB. The OMB control numbers and estimated response times for these requirements are: the submission of

scale inspection reports is approved under 0648–0330 at 15 minutes per response; the retention of scale weight reports is approved under 0648–0330 at 3 minutes per response; the inspection of an observer sampling station is approved under 0648–0269 at 2 hours per response; and the electronic transmittal of observer data is approved under 0648–0307 at 10 minutes per response.

The estimates of response times given here include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

NMFS prepared an FRFA for this final rule that describes the impact this action will have on small entities. A copy of this analysis is available from NMFS. No comments were received on the initial regulatory flexibility analysis prepared for this action. The Summary and Conclusions section of the FRFA states:

This action revises and clarifies the equipment and technical requirements for at-sea scales, observer sampling stations, and observer transmission of data by making numerous, minor revisions to the regulations implementing these programs. The action is necessary to ensure NMFS' ability to effectively manage these programs; to improve the clarity and consistency of the implementing regulations; and to reduce unnecessary regulatory burdens. It is being promulgated under the authority of the Magnuson-Stevens Act. This action will directly affect the 13 freezer longliners currently equipped with scales or observer sampling stations that may be small entities. The ownership characteristics of vessels that would be impacted by this action have not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. This action will impose no new reporting or recordkeeping requirements nor will it duplicate, overlap, or conflict with existing Federal rules. NMFS estimates that this action will cost the owners of directly affected freezer longliners less than $8,500 distributed among the 13 vessels and in no case cost any one vessel more than $1,700. This represents less than .06 percent of the average per-vessel gross revenues for the affected vessels. In addition to the preferred alternative, the analysis considered two other alternatives: a "no action" alternative that would not revise the existing regulations; and a "partial implementation" alternative that would implement some of the proposed revisions. These alternatives were rejected because they would fail to make the changes necessary for successful management of these programs. NMFS cannot quantify measures to minimize economic impacts on small entities with this type of rulemaking, which is being implemented to ensure that the NMFS-certified observer on board a vessel is able to collect data in a reliable and unbiased manner within a safe working environment. However, the preferred alternatives selected were crafted to minimize costs to the industry and still achieve safety goals.

A copy of the RIR/FRFA can be obtained from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

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

2. In § 679.28, the section heading is revised; introductory text to paragraphs (b)(2)(iii), (b)(3), (b)(3)(ii)(B), (b)(5), and (d)(8), is revised; and paragraphs (b)(2)(vii), (b)(3)(ii)(A), (b)(5)(i), (b)(6), (d)(2), (d)(3), (d)(5) through (d)(7), and (d)(8)(i)(G) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(b) * * *

(2) * * *

(iii) *Who may perform scale inspections?* Scales must be inspected by either a NMFS staff scale inspector or a scale inspector employed by a weights and measures agency designated by NMFS to perform scale inspections on its behalf. A list of authorized scale inspectors is available from the Regional Administrator upon request. Scale inspections are paid for by NMFS.

* * * * *

(vii) *Scale inspection report.* (A) A scale is approved for use when the scale inspector completes and signs a scale inspection report verifying that the scale meets all of the requirements specified in this paragraph (b)(2) and appendix A to this part.

(B) The scale inspector must provide the original inspection report to the vessel owner and a copy to NMFS.

(C) The vessel owner must either:

(1) Maintain a copy of the report on board when use of the scale is required and make the report available to the observer, NMFS personnel, or an authorized officer, upon request, or;

(2) Display a valid NMFS-sticker on each approved scale.

(D) When in use, an approved scale must also meet the requirements described in paragraphs (b)(3) through (b)(6) of this section.

(3) *At-sea scale tests.* To verify that the scale meets the MPEs specified in this paragraph (b)(3), the vessel operator must test each scale or scale system used to weigh total catch one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

* * * * *

(ii) * * * (A) The MPE for platform and hanging scales is plus or minus 0.5 percent of the known weight of the test material.

(B) *Test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection. The amount of test weights that must be provided by the vessel owner is specified in paragraphs (b)(3)(ii)(B)(*1*) and (b)(3)(ii)(B)(*2*) of this section.

* * * * *

(5) *Printed reports from the scale* (not applicable to observer sampling scales). The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to observers, NMFS personnel, or an authorized officer. In addition, printed reports must be retained by the vessel owner for 3 years after the end of the year during which the printouts were made.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once every 24 hours when use of the scale is required. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the

perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The haul or set number as recorded in the processor's DCPL (see § 679.5);

(C) The total weight of the haul or set;

(D) The total cumulative weight of all fish or other material weighed on the scale.

* * * * *

(6) *Scale installation requirements.* The scale display must be readable from where the observer collects unsorted catch.

* * * * *

(d) * * *

(2) *Location*—(i) *Motherships and catcher/processors or catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer collects unsorted catch. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer collects unsorted catch. When standing where unsorted catch is sampled, the observer must be able to see that no fish have been removed between the bin and the scale used to weigh total catch.

(ii) *Vessels using nontrawl gear.* The observer sampling station must be located within 5 m of the collection area, described at § 679.28(d)(7)(ii)(B), unless any location within this distance is unsafe for the observer. Clear, unobstructed passage must be provided between the observer sampling station and the collection area. Access must be provided to the tally station, described at § 679.28(d)(7)(ii)(A). NMFS may approve an alternative location if the vessel owner submits a written proposal describing the alternative location and the reasons why a location within 5 m of where fish are brought on board the vessel is unsafe, and the proposed observer sampling station meets all other applicable requirements of this section.

(iii) *What is clear, unobstructed passage?* Where clear and unobstructed passage is required, passageways must be at least 65 cm wide at their narrowest point, be free of tripping hazards, and be at least 1.8 m high. Doorways or companionways must be free of obstacles.

(3) *Minimum work space.* The observer must have a working area for sampling of at least 4.5 square meters. This working area includes the observer's sampling table. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

* * * * *

(5) *Observer sampling scale.* The observer sampling station must include a NMFS-approved platform scale with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor. The scale must be approved by NMFS under paragraph (b) of this section and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section when tested by the observer.

(6) *Other requirements.* The sampling station must include flooring that prevents slipping and drains well (grating or other material where appropriate), adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch*—(i) *Motherships and catcher/processors using trawl gear.* The conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch so that the observer can use this scale to weigh large samples. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling a haul.

(ii) *Catcher/processors using non-trawl gear.* In addition to the sampling station, vessels using non-trawl gear must provide: (A) *Tally station.* A place where the observer can see the gear as it leaves the water and can count and identify fish. It must be within 5 m of where fish are brought aboard the vessel and in a location where the observer is not in danger of falling overboard or being injured during gear retrieval. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high, grating or other non-slip material, and adequate lighting.

(B) *Collection area.* A collection area is a place where the observer, or vessel crew under the observer's guidance, collects fish as they come off the line or are removed from pots. It must be located where the observer can see the gear when it leaves the water. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high and grating or other non-slip material.

(8) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and approved by NMFS prior to its use for the first time and then one time each year within 12 months of the date of the most recent inspection with the following exceptions: If the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed when use of the observer sampling station is required, the observer sampling station inspection report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

(i) * * *

(G) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station as described at paragraph (d) of this section.

* * * * *

3. In § 679.32, paragraphs (c)(4)(iii) and (c)(4)(iv) are redesignated as paragraphs (c)(4)(iv) and (c)(4)(v) respectively, and a new paragraph (c)(4)(iii) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) * * *

(4) * * *

(iii) Obtain the data entry software provided by the Regional Administrator ("ATLAS software") for use by the observer and ensure that observer data can be transmitted from the vessel to NMFS at any time while the vessel is receiving, catching or processing CDQ species.

* * * * *

4. In appendix A to part 679, in section 2.3.1.8, paragraphs (a)(iv) and (a)(v), in section 3.3.1.7, paragraphs (a)(iv) and (a)(v), and in section 4.3.1.5, paragraph (iv) are removed; in section 2.3.1.8, paragraphs (a)(vi) through (a)(viii) are redesignated as paragraphs (a)(iv) through (a)(vi) respectively; in section 3.3.1.7, paragraphs (a)(vi) through (a)(viii) are redesignated as paragraphs (a)(iv) through (a)(vi) respectively; in section 4.3.1.5, paragraph (a)(v) is redesignated as paragraph (a)(iv); and the definition of "security seals or means" in section 5.0 is revised to read as follows:

APPENDIX A TO PART 679—PERFORMANCE AND TECHNICAL REQUIREMENTS FOR SCALES USED TO WEIGH CATCH AT SEA IN THE GROUNDFISH FISHERIES OFF ALASKA

* * * * *

5. Definitions

* * * * *

Security seals or means—A physical seal such as a lead and wire seal that must be broken in order to change the operating or performance characteristics of the scale, or a number generated by the scale whenever a change is made to an adjustable component. The number must be sequential and it must not be possible for the scale operator to alter it. The number must be displayed whenever the scale is turned on.

* * * * *

[FR Doc. 00–13185 Filed 5–24–00; 8:45 am]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 102
Thursday, May 25, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 536

RIN 3206–AI88

Grade and Pay Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing proposed regulations giving agencies discretionary authority to grant pay retention to certain employees moving to positions under pay systems other than the General Schedule or the Federal Wage System. This new flexibility would allow agencies to prevent eligible employees from suffering a reduction in pay that would otherwise result from a management action. The proposed regulations also provide that grade retention will no longer apply to employees moving into the General Schedule or the Federal Wage System from noncovered pay systems.

DATES: Comments must be received on or before July 24, 2000.

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

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

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 5361–5365, agencies may grant grade or pay retention to employees covered by the General Schedule (GS) pay system or the Federal Wage System (FWS) when a reduction in grade or pay is caused or influenced by a management action and certain other conditions are met. While the law expressly provides that these provisions apply to movements within or between those two covered pay schedules, the Office of Personnel Management (OPM) has provided by regulation that these provisions may also be applied to certain employees who move from a noncovered pay schedule to a covered pay schedule. (See definition of *employee* in 5 CFR 536.102.) This regulatory extension of the grade and pay retention provisions is authorized by 5 U.S.C. 5365(b)(1), which allows OPM to extend the application of "all or portions" of the grade and pay retention provisions to employees under noncovered pay schedules who move to a covered pay schedule.

The Department of Justice has requested that we extend pay retention to members of the Senior Executive Service (SES) who move to immigration judge (IJ) positions. While there is no provision in statute or regulation that permits management to direct the movement of a member of the SES to an IJ position, there are circumstances that have resulted in the movement of an SES member to a non-SES position that has a lower rate of pay. Examples include an SES member who voluntarily accepts a non-SES position following receipt of a notice of position abolishment or a notice of directed geographic reassignment (if there is no mobility agreement), or other management action that causes or influences the employee to move to a lower-paid position.

Prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, immigration judges were covered by the GS pay system. Before the statute was enacted, the Department of Justice was able to offer pay retention to an SES member who moved to an IJ position as a result of a management action, as described above. However, section 371 of the Act removed IJs from the GS pay system and established a unique IJ pay system with a top rate set at 92 percent of the rate of basic pay for SES level ES–5. As a result of the Act, immigration judges are no longer under a "covered pay system" and therefore are no longer eligible for pay retention. Because the statutory maximum IJ pay rate is less than the rates of pay for ES–5 and ES–6, an SES member who moves to an IJ position without pay retention could suffer a significant loss in pay. The inability to grant pay retention to employees who move between noncovered pay systems has deprived the Department of Justice of a needed degree of flexibility.

At the request of the Department of Justice, we reviewed this issue and determined that we have authority under the law to extend grade and pay retention to employees who move to or within noncovered pay schedules. Under 5 U.S.C. 5365(b)(2), OPM is authorized to apply "all or portions" of the grade and pay retention provisions to "individuals to whom such provisions do not otherwise apply." We further concluded that it would be appropriate as a matter of policy to amend our regulations to provide agencies with discretionary authority to grant pay retention to employees moving to or within noncovered pay schedules. Since these other pay schedules are generally not administered by OPM, we concluded that any use of the pay retention authority in these circumstances should be discretionary. We note that, under some circumstances, grade and pay retention benefits are already subject to an agency's discretion. (See 5 CFR 536.103(b) and 536.104(b).)

We concluded that this extension should not apply to grade retention, since that benefit was designed specifically for retention of grades under the GS and FWS pay systems. As explained above, the law allows OPM to selectively apply portions of the grade and pay retention provisions. Under current regulations, grade retention does not apply to members of the Senior Executive Service (SES) or employees in senior-level positions under 5 U.S.C. 5376 (SL/ST) even if they move to a covered pay schedule. (See 5 CFR 536.105(c).) However, the current regulations are silent regarding grade retention for administrative law judges (ALJs). Thus, it is possible for an ALJ who moves to a GS–14 position because of a management action to have GS–15 established as a retained grade. For consistency, we are proposing to amend the regulations to provide that grade retention does not apply to any employee who moves from, between, or within non-GS/FWS schedules—including the pay schedules for SES members, SL/ST positions, ALJs, and IJs.

We are proposing that the normal rules for adjusting a retained rate not be applied to employees covered by a regulatory extension of pay retention under 5 U.S.C. 5365(b) who are not in a GS or FWS position while receiving pay retention, or who are in a GS or FWS position but receiving a retained rate in excess of the maximum rate of the applicable basic pay schedule (GS or FWS). Under the normal rules, a GS or FWS employee's retained rate is adjusted by 50 percent of the dollar increase in the maximum rate for the employee's grade. However, other pay systems may not have the same type of grade-based pay structure or are subject to different annual pay adjustments.

For example, many senior-level pay schedules are linked to the Executive Schedule, which sometimes has not been adjusted on an annual basis. This can result in anomalous situations. If an SES member at the ES–2 level (currently $107,100) moves to a GS–15 position and receives a retained rate, that retained rate subsequently could be increased to a rate above the ES–2 rate in effect at some future date. (Note: Retained rates for GS employees are capped at the rate for level V of the Executive Schedule, which limits this problem; however, agencies are required to adjust and maintain the "retained rate of record" without regard to the level V cap.) We are proposing to exercise our authority under 5 U.S.C. 5365(b) not to apply the retained rate adjustment portion of the statutory pay retention provisions for the categories of employees described above. Thus, these employees' retained rates would be frozen with no provision for any pay adjustment.

These proposed regulations would not impair any agency's independent authority to fix pay for employees under a pay schedule administered by that agency. The proposed extension of the pay retention provisions would be relevant only if the agency lacks any other authority to establish a saved rate for its employees. For example, the Department of Justice does not have authority to create a saved rate under the IJ pay system based on the former rate received by an SES member. The proposed regulations would allow the Department of Justice, at its discretion, to extend pay retention to an SES member moving to an IJ position. To be entitled to pay retention, an employee must also meet all other qualifying conditions (*e.g.*, the pay reduction is caused or influenced by a management action, not at the employee's request or because of personal cause; there is no break in service; and there is no declination of a reasonable offer).

To effect the policy change proposed here, we propose to add a new paragraph (d) to § 536.104 to give agencies discretionary authority to provide pay retention to any otherwise eligible Federal "employee," as defined in 5 U.S.C. 2105. The definition of *employee* in § 536.102 would be broadened to include an "employee," as defined in 5 U.S.C. 2105, to whom pay retention is granted under this discretionary authority. However, we are also proposing to add a sentence to § 530.102 that expressly excludes officials in or moving from an Executive Schedule position, since we believe pay retention is not appropriate for such officials. In addition, § 536.105(c), which excludes certain employees from grade retention, would be revised to exclude any employee who moves from a position not under a statutorily covered pay schedule to a position under a statutorily covered pay schedule. Also, we propose to remove paragraph (3) under the definition of *representative rate* and paragraph (b) of § 536.203, since grade retention would no longer apply to employees moving from noncovered pay schedules.

We also propose to revise § 536.205(c) to provide that an employee who moves from a noncovered pay schedule to a statutorily covered pay schedule and who receives a retained rate in excess of the maximum rate of the statutorily covered pay schedule is not entitled to any increase in basic pay when there is an increase in the scheduled rates. In addition, to clarify and simplify the regulations, we propose to delete the language in the existing § 536.205(g), which we believe is unnecessary in view of other provisions found elsewhere in parts 531, 532 and 536.

Instead, we propose to revise § 536.205(g) to address how the rules for administering a retained rate apply to employees under an administratively covered pay schedule who were granted pay retention under § 536.104(d). Specifically, the proposed change provides that the retained rate of such an employee will be frozen and that the regular or normal rate to which the employee otherwise would be entitled (but for pay retention) must be treated as a single-rate range in applying paragraphs (b) and (d) of that section, including the provisions governing the 150 percent cap established by 5 U.S.C. 5363(b)(2).

As noted above, eligibility for grade and pay retention is subject to certain exclusions, as provided in 5 CFR 536.105. Paragraph (a)(1) of that section bars grade or pay retention for employees who move from a position that is not in an "agency" as defined in 5 U.S.C. 5102. This definition of "agency," which is located in paragraph (a) of section 5102, is used to exclude employees in certain agencies from coverage under the GS classification and pay system. Other employees are excluded from the GS system if they fall under one of the categories of employees listed in paragraph (c) of section 5102 or if they are excluded by some other provision of law.

The exclusion in § 536.105(a)(1) is not statutory, but reflects a limitation OPM imposed simultaneous with the regulatory extension of grade and pay retention eligibility to employees moving to a covered pay schedule from a noncovered pay schedule. Recently OPM approved a variation to § 536.105(a)(1) at the request of the Department of Defense (DOD). (See Notice of OPM Variation, Notice No. 99–47, November 3, 1999.) While DOD is a covered agency under 5 U.S.C. 5102, several DOD subcomponents are expressly excluded from the definition of "agency" in 5 U.S.C. 5102(a)—namely, the National Security Agency, the Defense Intelligence Agency, and the National Imagery and Mapping Agency. Therefore, employees in these subcomponents are barred by § 536.105(a)(1) from receiving grade and pay retention upon movement to a covered pay schedule. DOD requested that OPM approve a variation to 5 CFR 536.105(a)(1) to allow otherwise eligible employees who move to GS or FWS positions from positions in these DOD subcomponents to receive grade or pay retention, even though these DOD subcomponents are excluded from the definition of an "agency" in 5 U.S.C. 5102(a). OPM agreed that a variation was warranted to ensure equal treatment of DOD employees.

Upon further consideration, we believe that the provision in § 536.105(a)(1) barring grade or pay retention for employees who move from a position that is not is an agency as defined in 5 U.S.C. 5102 should be removed altogether. The current rule results in inequitable treatment of employees by providing different benefits based on the specific method used to exclude an employee from coverage under the GS system. For pay retention purposes, we believe it should not matter whether an employee is excluded from the GS system under paragraph (a) or (c) of 5 U.S.C. 5102 or under some other provision of law. Therefore, we propose to remove the existing paragraph (a)(1) from § 536.105. This will extend pay retention eligibility to certain categories of non-GS employees. (Grade retention is not at issue, since we are already proposing to

bar grade retention for all employees in or moving from non-GS/FWS pay systems.)

E.O. 12866, Regulatory Review

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

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

List of Subjects in 5 CFR Part 536

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 536 of title 5 of the Code of Federal Regulations as follows:

PART 536—GRADE AND PAY RETENTION

1. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), 104 Stat. 1338–336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981; § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—Definitions; Coverage and Applicability

2. In § 536.102, the definition of *Representative rate* is amended by adding "or" after the semicolon at the end of paragraph (1), removing the "or" at the end of paragraph (2), and replacing the semicolon with a period, and removing paragraph (3); and the definition of *employee* is revised to read as follows:

§ 536.102 Definitions.

* * * * *

Employee means an employee as defined in 5 U.S.C. 5361 and also an individual who moves from a position which is not under a statutorily covered pay schedule to a position which is under a statutorily covered pay schedule, provided that the individual's employment immediately prior to the move was not on a temporary or term basis. *Employee* also means an employee as defined in 5 U.S.C. 2105 who is granted pay retention under § 536.104(d), subject to the limitations set forth in this part. However, *employee* does not include an official in or moving from an Executive Schedule position.

* * * * *

3. In § 536.104, a new paragraph (d) is added to read as follows:

§ 536.104 Coverage and applicability of pay retention.

* * * * *

(d) The head of an agency may apply the pay retention provisions of this part to an individual not under a statutorily covered pay schedule (as defined in 5 U.S.C. 5361) whose rate of basic pay would otherwise be reduced as the result of a management action, provided that individual is an employee as defined in 5 U.S.C. 2105 (excluding an official in or moving from an Executive Schedule position). Coverage is subject to all other qualifying conditions and limitations established in this part.

4. In § 536.105, paragraph (a)(1) is removed, paragraphs (a)(2) through (a)(5) are redesignated as (a)(1) through (a)(4), respectively, and paragraph (c) is revised to read as follows:

§ 536.105 Exclusions.

* * * * *

(c) Grade retention under § 536.103 does not apply to an employee who—

(1) Moves to a position not under a statutorily covered pay schedule; or

(2) Moves from a position not under a statutorily covered pay schedule to a position under a statutorily covered pay schedule.

5. Section 536.203 is revised to read as follows:

§ 536.203 Determination of retained grade.

An employee who is in a position under a statutorily covered pay schedule immediately prior to the action that gives entitlement to grade retention shall retain the grade held immediately prior to the action.

6. In § 536.205, paragraphs (c) and (g) are revised to read as follows:

§ 536.205 Determination of rate of basic pay.

* * * * *

(c) When an increase in the scheduled rates of the grade of the employee's position occurs while the employee is under pay retention, the employee is entitled to 50 percent of the amount of the increase in the maximum rate of basic pay payable for the grade of the employee's current position. This paragraph does not apply to employees who move from a noncovered pay schedule to a statutorily covered pay schedule and who are receiving a retained rate in excess of the maximum payable rate of the applicable covered pay schedule.

* * * * *

(g) Notwithstanding paragraphs (b), (c), and (d) of this section, for an employee who is not in a position under a statutorily covered pay schedule while receiving a retained rate (as allowed by § 536.104(d))—

(1) The retained rate is compared to the rate of basic pay that otherwise would apply to the employee but for the retained rate (instead of comparing it to the maximum rate of the rate range for the employee's position) and is terminated when the retained rate falls below the employee's otherwise applicable rate;

(2) The retained rate is capped at 150 percent of the rate of basic pay that otherwise would apply to the employee but for the retained rate (instead of 150 percent of the maximum rate of the rate range for the employee's position); and

(3) The retained rate is frozen and may not be increased.

[FR Doc. 00–13052 Filed 5–24–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1735

RIN 0572–AB56

General Policies, Types of Loans, Loan Requirements—Telecommunications Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Supplemental proposed rule.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend its regulations to update the criteria for determining "reasonably adequate service" levels for local exchange carriers and providers of specialized telecommunications service. This supplemental proposed rule is part of an ongoing RUS project to modernize agency policies in order to provide borrowers with the flexibility to continue providing reliable, modern telephone service at reasonable costs in rural areas, while maintaining the security and feasibility of the Government's loans.

DATES: Written comments on this supplemental proposed rule must be received by RUS by or carry a postmark or equivalent of June 26, 2000.

ADDRESSES: Submit written comments on this supplemental proposed rule to Roberta D. Purcell, Assistant Administrator, Telecommunications

Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. RUS requires a signed original and three copies of all comments (7 CFR part 1700.4). All comments received will be available for public inspection in room 4056, South Building, U.S. Department of Agriculture, Washington, DC, between 8 a.m. and 4 p.m., Monday through Friday (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Deputy Assistant Administrator, Telecommunications Program, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4056, STOP 1590, Washington, DC 20250–1590. Telephone: (202) 720–9556.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be not significant and, therefore, has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this proposed rule meets the applicable standards provided in section 3 of that Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

RUS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS telecommunications loan program provides borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

This proposed rule contains no new reporting or recordkeeping burdens, under OMB control number 0572–0079 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden to F. Lamont Heppe, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Avenue, SW., Room 4034, STOP 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under numbers 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Executive Order 12372

This program is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Unfunded Mandates

This proposed rule contains no Federal mandates (under the regulatory provisions of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The telecommunications industry is becoming increasingly competitive. The Telecommunications Act of 1996 (Public Law 104–104) and regulatory actions by the Federal Communications Commission (FCC) are drastically altering the regulatory and business environment of all telecommunications systems, including RUS borrowers. At the same time, changes in overall business trends and technologies continue to place pressure on RUS-financed systems to offer a wider array of services and to operate more efficiently.

The Telecommunications Act of 1996 mandates that universally available and affordable telecommunications services, including advanced services, be made available to all US citizens—whether in rural areas or city centers, affluent or poor communities. RUS supports this mandate and the goal that, with the assistance of advanced telecommunications technology, rural citizens be provided the same economic, educational, and health care benefits available in the larger metropolitan areas. RUS believes that the most expeditious way to bring the full range of telephone services to rural areas is to make certain providers of advanced services, in addition to providers of local exchange services, eligible for RUS financing.

RUS regulations currently contain criteria for RUS to consider in determining whether telecommunications service is reasonably adequate (7 CFR 1735.12(c), Nonduplication). However, these criteria do not recognize certain technological and other factors that are currently employed to determine adequate service. RUS is proposing separate criteria for local exchange carriers and providers of specialized telecommunications service. These revised criteria for determining "reasonably adequate service" are derived primarily from RUS policies related to telecommunications carriers generally, the Telecommunications Act of 1996, and FCC rules and regulations.

Under the Telecommunications Act of 1996, all incumbent local exchange carriers (ILECs) are automatically considered eligible telecommunications carriers (ETCs). An ETC is certified by the regulatory commission having jurisdiction, which makes it eligible to receive universal service support. Each State regulatory commission will name at least one ETC for every area. In return for universal service support, the ETC must make available an FCC-specified level of service throughout a designated area. Furthermore, an ETC must agree to advertise basic services in a specific area and offer service to everyone in that area.

If a LEC that has not previously borrowed from RUS applies for financing, RUS is proposing to lend only to those LECs that are ETCs within the State or tribal jurisdiction in which their financed facilities are to be located, LECs that have made commitments, satisfactory to RUS, to become ETCs, or LECs that commits to act as ETCs with respect to the area coverage requirements as described in § 1735.11. ETCs are eligible for universal service support and have accepted the obligations of being an ETC. ETC status, therefore, both enhances loan feasibility and promotes area wide coverage.

The Governor of RTB utilizes RUS policies in carrying out RTB's loan program. Therefore, these policy revisions would apply to loans made by RTB, as well.

RUS proposed amending certain provisions of 7 CFR part 1735 in a Proposed Rule published on February 11, 2000 at 65 FR 6922. Subsequently, RUS continued to review and analyze the rapidly developing telecommunications environment and decided to propose further revisions of certain provisions of 7 CFR part 1735, including portions of §§ 1735.2, 1735.10(c), 1735.12, and 1735.14 as published on February 2, 2000. RUS requests comments on all provisions published in this Supplemental Proposed Rule. Those proposed amendments published first on February 11, 2000, but revised again by this supplement will be subject to the procedures, including those concerning public comments, applicable hereto.

List of Subjects in 7 CFR Part 1735

Accounting, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, 7 CFR chapter XVII is proposed to be amended as follows:

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

1. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. In § 1735.2, as proposed to be amended February 11, 2000, at 65 FR 6923, revise the definition of Mobile telecommunications service and add the following definitions in alphabetical order to read as follows:

§ 1735.2 Definitions.

* * * * *

Exchange access means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services.

* * * * *

Local exchange carrier (LEC) means an organization that is engaged in the provision of telephone exchange service or exchange access.

* * * * *

Mobile telecommunications service means radio communication voice service between mobile and land or fixed stations, or between mobile stations.

Modernization Plan (State Telecommunications Modernization Plan) means a State plan, which has been approved by RUS, for improving the telecommunications network of those telecommunications providers covered by the plan. A Modernization Plan must conform to the provisions of 7 CFR part 1751, subpart B.

* * * * *

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

* * * * *

Specialized telecommunications service means any telephone service other than telephone exchange service, exchange access, or mobile telecommunications service.

* * * * *

Telecommunications means the transmission or reception of voice, data, sounds, signals, pictures, writings, or signs of all kinds, by wire, fiber, radio, light, or other visual or electromagnetic means.

Telephone exchange service means: (1) Service provided primarily to fixed locations within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge; or (2) Comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

* * * * *

3. Revise § 1735.10(c), as proposed to be revised February 11, 2000, at 65 FR 6923, to read as follows:

§ 1735.10 General.

* * * * *

(c) A borrower receiving a loan to provide mobile telecommunications services or special telecommunications services shall be considered to be participating in the state telecommunications plan (TMP) with respect to the particular loan so long as the loan funds are not used in a manner that, in RUS' opinion, is inconsistent with the borrower achieving the goals set forth in the plan, except that a borrower must comply with any portion of a TMP made applicable to the borrower by a state commission with jurisdiction.

* * * * *

4. In § 1735.12, as proposed to be amended at 65 FR 6923, revise paragraph (c) and add paragraph (f) to read as follows:

§ 1735.12 Nonduplication.

* * * * *

(c) RUS shall consider the following criteria for any wireline local exchange service or similar fixed-station voice service provided by a local exchange carrier (LEC) in determining whether such service is reasonably adequate:

(1) The LEC is providing area coverage as described in § 1735.11.

(2) The LEC is providing all one-party service or, if the State commission has mandated a lower grade of service, the LEC is eliminating that service in accordance with the requirements of the Telecommunications Act of 1996, 47 U.S.C. 151 *et seq.*

(3) The LEC's network is capable of providing transmission and reception of data at a rate of at least 1,000,000 bits per second (1 Mbps) with reasonable modification to any subscriber who requests it.

(4) The LEC makes available custom calling features (at a minimum, call waiting, call forwarding, abbreviated dialing, and three-way calling).

(5) The LEC is able to provide E911 service to all subscribers, when requested by the government entity responsible for this service.

(6) The LEC is able to offer local service with blocked toll access to those subscribers who request it.

(7) The LEC's network is capable of accommodating Internet access at speeds of at least 28,800 bits per second (28.8 Kbps) via modem dial-up from any subscriber location.

(8) There is an absence of frequent service interruptions.

(9) The LEC is interconnected with the public switched network.

(10) No Federal or State regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(11) Services are provided at reasonably affordable rates.

(12) Any other criteria the Administrator determines to be applicable to the particular case.

* * * * *

(f) RUS shall consider the following criteria for any provider of a specialized telecommunications service in determining whether such service is reasonably adequate:

(1) The provider of a specialized telecommunications service is providing area coverage as described in § 1735.11.

(2) An adequate signal strength is provided throughout the largest practical portion of the service area.

(3) There is an absence of frequent service interruptions.

(4) The quality and variety of service provided is comparable to that provided in nonrural areas.

(5) The service provided complies with industry standards.

(6) No Federal, State, or local regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Services are provided at reasonably affordable rates.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

5. In § 1735.14, as proposed to be amended at 65 FR 6924, remove "and" at the end of paragraph (c)(1), remove the period at the end of paragraph (c)(2) and add "; and" in its place, and add new paragraph (c)(3) to read as follows:

§ 1735.14 Borrower eligibility.

* * * * *

(c) * * *

(3) If a local exchange carrier, must be either an eligible telecommunications carrier (ETC) within the State or tribal jurisdiction in which the RUS-financed facilities are to be located, a LEC that has made a commitment, satisfactory to RUS, to become an ETC within the State or tribal jurisdiction in which the financed facilities are to be located, or a LEC that commits to act as an ETC in such a manner as to meet the area coverage requirements as described in § 1735.11.

Dated: May 12, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–12657 Filed 5–24–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1710

RIN 2550–AA09

Releasing Information; Electronic Freedom of Information Amendment

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to amend its regulations to reflect the changes to the Freedom of Information Act (FOIA) made by the Electronic Freedom of Information Act Amendments Act of 1996 (1996 Act) and to revise the method of computing fees. The proposal provides for: electronic FOIA requests; access to records published or released under FOIA in electronic format; expedited processing of FOIA requests upon a showing of compelling need; publication of responses to FOIA requests that are likely to become repeat requests; aggregation of clearly related requests by a single requester or group of requesters acting in concert; informing the requester of the volume of requested material withheld and the extent of deletions both in publicly available records and records released in response to a FOIA request; and a method for computing fees that is based upon the classification of the employee performing the work as executive, professional, or clerical.

DATES: Written comments regarding the proposed rulemaking must be received by July 24, 2000.

ADDRESSES: All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Alternatively, comments may be submitted via electronic mail to: *RegComments@ofheo.gov*. Copies of all communications received will be available for public inspection and copying at the address above.

FOR FURTHER INFORMATION CONTACT: Dorothy J. Acosta, Associate General Counsel, 1700 G Street NW, Fourth Floor, Washington, DC 20552, telephone (202) 414–6924 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION: On December 23, 1998, OFHEO issued a final rule governing the release of information to the public, which, among other things, implemented the requirements of the Freedom of Information Act (FOIA). 63 FR 70998, Dec. 23, 1998. At the time of the publication of the final regulation, OFHEO noted that Congress had enacted the Electronic Freedom of Information Act Amendments of 1996 (1996 Act) [1] to provide for public access to information in an electronic format and for other purposes and announced that these amendments would be implemented by a separate rulemaking. Although certain of the 1996 Act's amendments that did not involve access to records in an electronic format were included in the final regulation, such as the extension of the time limit for the initial agency response from ten (10) to 20 days, this proposed regulation implements the remainder of the amendments and proposes a new method for computing fees. The 1996 Act amendments that are reflected in this proposal are: (1) The requirement to make requested documents available in the form or format specified by the requester, provided the document is readily reproducible in that form or format; (2) the requirement to make publicly available copies of records released in response to FOIA requests that are likely to become the subject of subsequent requests for substantially the same records; (3) the requirement for electronic access to records required to be made public by 5 U.S.C. 552(a)(2) that were created after November 1, 1996; (4) the requirement to provide expedited processing of FOIA requests upon a showing of compelling need by the requester and in such other cases as the agency may determine; (5) the requirement to indicate the extent of any deletion made in released records and publicly available records; (6) the requirement to inform the requester of the estimated volume of material withheld; and (7) the provision for aggregating clearly related requests as a single request when such a request would constitute an "unusual circumstance" justifying an extension of the response time. Although the 1996 Act authorized agencies to promulgate regulations providing for multi-tracking of FOIA requests based on the amount of time or work (or both) involved in processing requests, OFHEO has elected not to propose such regulations at this time. Thus far, the volume of FOIA requests has not been so great that a multi-tracking system is needed.

[1] Pub. L. 104–231, 110 Stat. 3048.

Although not required by the 1996 Act, the proposed regulation would allow requests to be made electronically.

The proposal would also revise the way fees are determined for personnel costs involved in processing a request. Currently, an hourly rate for actual time spent searching, reviewing, and duplicating is determined by the salary of the particular employee performing the work plus 16% of that amount to reflect the cost of benefits. In order to simplify the calculation of fees and provide a more transparent and predictable fee schedule for requesters, OFHEO proposes a method for computing fees that would charge one of three hourly rates for personnel costs associated with responding to a request, depending on whether the employee performing the work is classified as executive, professional, or clerical. An average of the actual compensation (salary and benefits) of all employees of OFHEO in a particular classification would determine the actual hourly fee for that classification. These fees would be adjusted periodically to reflect significant changes in average compensation. The current fee schedule would be available on OFHEO's website (*http://www.ofheo.gov/docs/*) and by mail.

Section-by-Section Analysis

Subpart A—General Definitions

The definition of "record" in § 1710.2(j) would be amended by inserting the phrase "regardless of form or format," to clarify that a record may be electronic in form.

Subpart B—Documents and Information Generally

Subpart B contains general provisions relating to disclosure of documents and information in the possession of OFHEO. Section 1710.7(c) provides that if a requested record is available through routine distribution procedures, OFHEO will first refer the requester to those sources, and only if the requester is not satisfied will OFHEO treat the request as a FOIA request. The proposed regulation adds the OFHEO website, (*http://www.ofheo.gov*) to the list of routine distribution procedures.

Subpart C—Availability of Records of OFHEO

Section 1710.11 of subpart C provides, generally, for the release of OFHEO records. Paragraph (a) of this section addresses the release of records in response to requests and paragraph (b) addresses records required to be made publicly available, including current indexes to such records. The proposed regulation separates the provisions of existing § 1710.11 that relate to records required to be made publicly available pursuant to 5 U.S.C. 552(a)(2) from those that relate to the release of records upon request and relocates provisions related to records required to be made publicly available to § 1710.12. The existing provisions of § 1710.12 would be deleted, because they are made unnecessary by other amendments to the regulation. Specific changes to the existing text of §§ 1710.11 and 1710.12 are explained more fully below.

Section 1710.11(a) would be amended to incorporate the substance of § 1710.11(c), which addresses copying costs, and to state that records will be made available in the form or format requested provided they are readily reproducible in that form or format with reasonable effort. "Readily reproducible" is defined to mean, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, or other electronic medium using equipment currently in use by OFHEO.

Section 1710.11(b), which addresses records required to be made publicly available under 5 U.S.C. 552(a)(2), would be redesignated as § 1710.12(a) and amended to: (1) Incorporate the substance of § 1710.11(c) addressing copying costs; (2) state that all publicly available documents are available by mail; (3) state that records created after November 1, 1996, including current indexes to all publicly available records regardless of when created, will be available on OFHEO's website; and (4) add to the list of records publicly available, copies of records that have been released under the FOIA that OFHEO believes are likely to become the subject of subsequent requests for substantially the same records.

Section 1710.11(c), which relates to copying charges, would be deleted and its substance incorporated in §§ 1710.11(a) and 1710.12(a).

Section 1710.11(d), which sets forth FOIA exemptions, would then be redesignated as § 1710.11(b). This allows the regulatory designation for exemptions to be consistent with the statutory designation (*i.e.*, (b)(1), (b)(2), (b)(3), etc. instead of (d)(1), (d)(2), (d)(3), *etc.*) and avoids potential confusion arising from different statutory and regulatory designations.

Section 1710.11(e) would be redesignated as § 1710.1(c).

Section 1710.11(f) would be redesignated as § 1710.11(d) and would be amended to require that the amount of any information deleted from a record released under FOIA be indicated on the released portion of the record (at the place the deletion is made, if technically feasible).

Section 1710.11(g), which relates to permissible deletions in publicly available records, would be redesignated as § 1710.12(b) and amended to state that the extent of any deletions necessary to protect personal privacy will be indicated on the records that are publicly available under redesignated § 1710.12(a), at the place where the deletion is made if technically feasible, unless including the indication would harm an interest protected by the exemption on which the deletion is based.

Section (h) would be redesignated as § 1710.11(e).

Section 1710.12(a) currently states that the indexes that are required to be made available for public inspection and copying under 5 U.S.C. 552(a)(2) are available for inspection and copying at OFHEO's offices during regular business hours. This existing provision would be deleted because it is duplicative of the introductory language of existing § 1710.11(b), which would be redesignated as § 1710.12(a) and amended as described above. The heading of § 1710.12 would be revised to read "Publicly Available Records."

Section 1710.12(b) currently contains the Director's determination that, because of the lack of requests to date for records required to be indexed, such indexes do not need to be published quarterly. It states, however, that the indexes will be provided by mail upon request. Because OFHEO proposes to publish current indexes on its website, this finding is unnecessary and would be deleted. The statement that current indexes are available by mail would be relocated to § 1710.12(a).

Section 1710.13 would be amended to permit requests to be made by facsimile or electronic mail and to require that the request include the submitter's name, address and telephone number, to enable the FOIA Officer to contact the requester about the request in the event that clarification is needed.

Section 1710.14(c) would be amended to state that OFHEO is not required to create a record to respond to a request, replacing a statement that OFHEO will not create a record. While normally OFHEO will not create a record to respond to a request, there may be some circumstances in which it is easier to create a record than to redact a record or records in which the requested information is contained.

Section 1710.15, which prescribes the form and content of FOIA responses, would be amended by adding a

requirement that a notice of denial of a FOIA request (in whole or in part) include an estimate of the volume of requested material withheld, unless providing it would harm an interest protected by the exemption on which the denial is based.

Section 1710.16 sets forth the process for appeal of denials. Paragraph (a) would be amended to clarify that the appeal procedures also apply to denials of requests for expedited processing. Paragraph (b) would be amended to permit appeals to be submitted electronically or by facsimile. Paragraph (g), which sets forth the right to judicial review, currently states that a requester will be deemed to have exhausted his or her administrative remedies if an administrative appeal has been denied or has not been acted on within 20 days of receipt. This paragraph would be amended to state that if OFHEO provides the requester an opportunity to limit the scope of the request or arrange an alternate time for processing the request, the requester's refusal to do either will be considered a factor in determining whether "exceptional circumstances" exist. A showing of exceptional circumstances and due diligence on the part of the agency allows a court in which judicial review is sought to grant a stay to allow the agency additional time to complete its review of the records.

Section 1710.17 of the existing rule describes the time limits within which OFHEO will respond to initial requests and appeals of denials of requests. Paragraph (b) would be amended to state that appeals of denials of expedited processing will be acted on as expeditiously as practicable. Paragraph (c) would be amended by providing that if OFHEO extends the time limit stated in that paragraph and is unable to process the request by the date specified in the notice, OFHEO will offer the requester an opportunity to limit the scope of the request or arrange an alternate time frame for processing the request or a modified request. A new paragraph (d) would be added that provides for aggregating multiple requests involving clearly related matters made by a single requester, or group of requesters acting in concert, when such requests would, if considered as a single request, constitute an "unusual circumstance" justifying an extension of the response time. A new paragraph (e) would be added that provides for expedited processing upon a showing of compelling need by the requester and in such other cases as OFHEO may determine. A request for expedited processing must be accompanied by a statement, certified to be true and correct by the requester, that demonstrates compelling need. To show compelling need, the requester's statement must demonstrate that failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, in the case of a requester whose main professional occupation or activity is the dissemination of information, that there is urgency to inform the public of the government activity involved in the request beyond the public's right to know of government activity generally. The requester must be notified within 10 working days of the disposition of the request, and any appeal of the denial must be acted on expeditiously.

Subpart D—Fees for Provision of Information

Subpart D sets forth the fees that will be assessed for services rendered in responding to and processing requests for records under the FOIA. The definition of "direct costs" in § 1710.21(b) would be amended to include the costs of any automated searches and the cost of securing any contract services that may be necessary to respond to a FOIA request. To reflect the revised fee schedule set forth in the amended section 1710.22(b), a reference to that section is substituted for the reference to the actual salary of the person performing the work as a basis for the fees charged.

Section 1710.21(f) would be amended by adding a requirement that the copy of the requested record be provided in the form or format requested, provided it is readily reproducible in that form or format with reasonable effort.

Section 1710.22 would be revised to reflect a new method for computing fees and to make minor technical changes to better accommodate the changes made in response to the 1996 Act. Instead of basing the fee on the actual salary rate of the employee performing the work plus 16% for benefits, OFHEO proposes to charge one of three hourly fees determined by whether the employee performing the work is classified as executive, professional, or clerical. The fee for each category would be determined by the average of the actual salaries and benefits of the employees in that category and would be adjusted periodically to reflect significant changes in average compensation of the class. The "executive" category refers to the senior management of the agency (*i.e.* Director, Deputy Director, Associate Directors, and Deputy Associate Directors). The "clerical" category includes employees performing primarily secretarial, clerical or ministerial tasks. The "professional" category includes all other employees. A current fee schedule would be available on OFHEO's website or by mail. Conforming changes are made in paragraph (b)(1)(ii) of this section, § 1710.23(g), and § 1710.38(a) of this part.

Technical changes to § 1710.22 include substituting "computer equipment" for "central processing unit" and changing the heading in § 1710.22(b)(2) from "Duplication" to "Reproduction" to clarify that the paragraph applies both to duplicating a record in the same format and to reproducing a record in a different format, and by changing the word "reproduction" to "photocopied" in the first sentence to clarify that the per page charge applies only to photocopies of records. Conforming changes are made in § 1710.23.

Throughout the regulation, minor, nonsubstantive syntactical changes are made in the revised sections and citations to sections of the Freedom of Information Act are replaced with citations to the sections of the regulation containing the relevant statutory provisions. Citations to 5 U.S.C. 552 are replaced with "the Freedom of Information Act." These changes will allow the reader to understand the regulatory provisions without referring to the statute.

Regulatory Impact

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. OFHEO has determined that this rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

Executive Order 12866, Regulatory Planning and Review

OMB has determined that rulemakings that amend FOIA regulations to implement the requirements of the Electronic Freedom of Information Act Amendments of 1996 are not "significant" regulations for the purposes of Executive Order 12866.

Executive Order 12988, Civil Justice Reform

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This final rule meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Consequently, the rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel has certified that this final rule will not have significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, requires that regulations involving the collection of information receive clearance from OMB. This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review under the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1710

Administrative practice and procedure, Confidential business information, Electronic products, Freedom of information.

Accordingly, for reasons set forth in the preamble, OFHEO proposes to amend 12 CFR part 1710 as follows:

PART 1710—RELEASING INFORMATION

1. The authority citation for part 1710 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 4513, 4522, 4526, 4639; E.O. 12600; 3 CFR, 1987 Comp., p. 235.

Subpart A—General Definitions

§ 1710.2 [Amended]

2. Amend § 1710.2(j) by adding ", regardless of form or format," after "document".

Subpart B—Documents and Information Generally

§ 1710.7 [Amended]

3. Amend the first sentence of § 1710.7(c) by adding "or material offered on OFHEO's website (*http://www.ofheo.gov*)," after the comma following the parenthetical.

Subpart C—Availability of Records of OFHEO

4. Revise § 1710.11 to read as follows:

§ 1710.11 Official records of OFHEO.

(a) OFHEO shall, upon a written request for records that reasonably describes the information or records and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person for inspection and/or copying, except as provided in paragraph (b) of this section. OFHEO may charge a fee determined in accordance with subpart D of this part. OFHEO will make the record available in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, tape, or other electronic medium using equipment currently in use by OFHEO.

(b) *Records not available.* Except as otherwise provided in this part, or as may be specifically authorized by the Director, the following information and records, or portions thereof, are not available to requesters:

(1) Any record, or portion thereof, that is—

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) Is in fact properly classified pursuant to such Executive order.

(2) Any record, or portion thereof, related solely to the internal personnel rules and practices of OFHEO.

(3) Any record, or portion thereof that is specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) Any matter contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with OFHEO.

(6) Any information contained in personnel and medical files and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Any records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an Enterprise regulated and examined by OFHEO that furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Any matter that is contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of OFHEO.

(9) Any geological and geophysical information and data, including maps, concerning wells.

(c) Even if an exemption described in paragraph (b) of this section may be reasonably applicable to a requested record, or portion thereof, OFHEO may elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof. The fact that the exemption is not applied by OFHEO to any requested record, or portion thereof, has no precedential significance as to the application or nonapplication of the exemption to any other requested record, or portion thereof, no matter when the request is received.

(d) Any reasonably segregable portion of a record shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subpart. The amount of the information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in paragraph (b) of this section pursuant to which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

(e) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

5. Revise § 1710.12 to read as follows:

§ 1710.12 Publicly available records

(a) The records described in this paragraph are available for public inspection and copying, for a fee determined in accordance with subpart D of this part, at OFHEO's offices located at 1700 G Street, NW, Fourth Floor, Washington, DC 20552. Records created on or after November 1, 1996, and current indexes to all records described in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section, including those created before November 1, 1996, are available electronically at *http://www.ofheo.gov/docs/*. The publicly available records include—

(1) Any final opinions issued by OFHEO, as well as orders made in adjudication of cases as set forth in § 1710.9 of subpart B of this part;

(2) Any statements of policy and interpretation that have been adopted by OFHEO and have not been published in the **Federal Register**;

(3) Any OFHEO administrative staff manuals and instructions to staff that affect a member of the public, and that are not exempt from disclosure under the Freedom of Information Act;

(4) Copies of all records released pursuant to this subpart that OFHEO determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) Current indexes to the records described in this paragraph.

(b) To the extent necessary to prevent an invasion of personal privacy, the Director may delete identifying details from a record described in paragraph (a) of this section. In each case of such deletion, the justification will be clearly explained in writing and the extent of such deletion indicated (at the place in the record where the deletion is made if technically feasible), unless including that indication would harm an interest protected by the exemption in § 1710.11(b) pursuant to which the deletion is made.

6. Revise § 1710.13(a) to read as follows:

§ 1710.13 Requests for records.

(a) *Addressing requests.* Requests for records in the possession of OFHEO shall be made in writing but may be submitted by regular mail, electronic mail, or facsimile. If the request is sent by regular mail, the request shall be addressed to FOIA Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552, with both the envelope and the letter marked "FOIA Request." Electronic mail requests shall be addressed to *foia_office@ofheo.gov*, with "FOIA Request" in the subject line. Requests submitted by fax shall be sent to FOIA Officer at (202) 414–8917 and shall be clearly marked "FOIA Request." All requests shall include the requester's name, address, and telephone number. An improperly addressed request will be deemed not to have been received for purposes of the 20-day time period set forth in § 1710.17(a) of this subpart until it is received, or would have been received with the exercise of due diligence, by the FOIA Officer. Records requested in conformance with this subpart that are not exempt records may be obtained in person, by regular mail, or by electronic mail, as specified in the request, provided the records are readily reproducible in the requested form or format with reasonable effort. Records to be obtained in person will be available for inspection or copying during business hours on a regular business day in the office of OFHEO.

* * * * *

§ 1710.14 [Amended]

7. Amend § 1710.14(c) by removing "will not" and adding "is not required to" in its place in the last sentence.

8. Amend § 1710.15(b) by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4) respectively, and adding a new paragraph (b)(2) to read as follows:

§ 1710.15 Form and content of responses.

* * * * *

(b) * * *

(2) An estimate of the volume of any requested matter that is withheld, unless providing the estimate would harm an interest protected by the exemption in § 1710.11 (b) pursuant to which the denial was made;

* * * * *

9. Amend § 1710.16 by revising paragraphs (a), (b), and (d) to read as follows:

§ 1710.16 Appeals of denials.

(a) *Right of appeal.* If a request, including a request for expedited processing, has been denied in whole or in part, the requester may appeal the denial to: FOIA Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington DC 20552. Electronic appeals shall be submitted to *foia_appeals_office@ofheo.gov* with "FOIA Appeal" in the subject line.

(b) *Letter of appeal.* The appeal must be in writing and submitted within 30 days of receipt of the denial letter. The appeal shall be submitted in the manner described in § 1710.13, except that it shall be clearly marked "FOIA Appeal" instead of "FOIA Request." An appeal shall include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the requested record. An improperly addressed appeal shall be deemed not to have been received for the purposes of the 20-day time period set forth in § 1710.17(b) until it is received, or would have been received with the exercise of due diligence, by the Appeals Officer.

* * * * *

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted his or her administrative remedies, giving rise to a right of judicial review under 5 U.S.C. 552(a)(4). However, a requester's refusal of OFHEO's offer of an opportunity to limit the scope of the request or arrange

an alternate time frame for processing the request shall be considered as a factor in determining whether "exceptional circumstances" exist, which permits a court in which a requester has sought judicial review, to grant a stay to allow OFHEO to complete its review of the records.

10. Revise § 1710.17 to read as follows:

§ 1710.17 Time limits.

(a) *Initial request.* Following receipt of a request for records, the FOIA Officer will determine whether to comply with the request and will notify the requester in writing of his or her determination within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the request.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 1710.16 of this subpart will be issued within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the appeal. However, determination of an appeal of a denial of expedited processing will be issued as expeditiously as practicable. When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If the date specified for the extension is more than 10 days after the initial time allowed for response, OFHEO will provide the requester an opportunity to limit the scope of the request or arrange for an alternate time frame for processing the request. As used in this paragraph, *unusual circumstances* means that there is a need to—

(1) Search for and collect the requested records from facilities that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various offices within OFHEO that have a substantial interest in the records requested.

(d) *Related requests.* OFHEO may aggregate multiple requests involving clearly related matters made by a single requester, or a group of requesters acting in concert, if OFHEO reasonably believes that such requests actually constitute a single request that would qualify as an "unusual circumstance."

(e) *Expedited processing.* (1) Upon a demonstration of compelling need by the requester, OFHEO will grant a request for expedited processing of a FOIA request. If a request for expedited processing is granted, OFHEO will give the request priority and process it as soon as practicable.

(2) To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(i) The failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester's main professional occupation or activity is information dissemination and there is a particular urgency to inform the public of government activity involved in the request beyond the public's right to know about government activity generally.

(3) The requester's statement of compelling need must be certified to be true and correct to the best of his or her knowledge and belief and must explain in detail the basis for requesting expedited processing. The formality of the certification required to obtain expedited treatment may be waived by OFHEO in its discretion.

(4) A requester seeking expedited processing will be notified within ten (10) working days of the receipt of the request whether expedited processing has been granted. If the request for expedited processing is denied, OFHEO will act on any appeal expeditiously.

§ 1710.18 [Amended]

11. Amend § 1710.18 as follows:

a. In paragraph (b)(1), remove "Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

b. In paragraph (c), remove "Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

c. In paragraph (d)(2), remove "5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

d. In paragraph (e)(1), remove "5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

e. In paragraph (i)(3), remove "5 U.S.C. 552" and add in its place "the Freedom of Information Act".

Subpart D—Fees for Provision of Information

12. Amend § 1710.21 by revising paragraphs (b) and (f) to read as follows:

§ 1710.21 Fees.

* * * * *

(b) *Direct costs* means the expenditures actually incurred by OFHEO in searching for and reproducing records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures OFHEO actually incurs in reviewing records to respond to the request. The direct costs shall include the cost of the time of the employee performing the work, determined in accordance with § 1710.22(b)(1)(i), the cost of any computer searches, determined in accordance with § 1710.22(b)(1)(ii), and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored. Direct costs also include the costs incurred by OFHEO for any contract services that may be needed to respond to a request.

* * * * *

(f) *Reproduce* and *reproduction* means the process of making a copy of a record necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation, *e.g.*, magnetic tape or disk. The copy provided shall be in the form or format requested, provided the record is readily reproducible in that form or format with reasonable effort, and shall be in a form reasonably usable by the requesters.

* * * * *

13. Revise § 1710.22 to read as follows:

§ 1710.22 Fees to be charged—general.

(a) Generally, the fees charged for requests for records pursuant to the Freedom of Information Act will cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees will be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1710.23 of this subpart for services rendered by OFHEO staff in responding to, and processing requests for, records under this part. Fees

assessed shall be paid by check or money order payable to the Office of Federal Housing Enterprise Oversight.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.* (i) *Manual searches for records.* OFHEO will charge for actual search time, billed in 15-minute segments, at a rate determined by whether the employee performing the work is classified as clerical, professional, or executive. The hourly fee for each classification is based on the average of the actual compensation (salary and benefits) of employees in the classification and is adjusted periodically to reflect significant changes in the average compensation of the class. The "executive" classification includes the senior management of OFHEO, *i.e.* Director, Deputy Director, Associate Directors and Deputy Associate Directors. The "clerical" classification includes employees performing primarily secretarial, clerical, or ministerial tasks. The "professional" classification includes all positions not classified as "executive" or "clerical." A current fee schedule is available on electronically at http://www.ofheo.gov/docs/ or by regular mail.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the computer equipment for that portion of operating time that is directly attributable to searching for records and the cost of the time of the employee performing the work, determined as described in paragraph (b)(1)(i) of this section. A charge will also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to OFHEO for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(iii) *Unproductive searches.* OFHEO may charge search fees even if no records are found that are responsive to the request or if the records found are exempt from disclosure.

(2) *Reproduction.* Records will be photocopied at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester will be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) will be charged.

(3) *Review.* Only requesters who are seeking records for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.*, the review undertaken the first time OFHEO analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a review are properly assessable.

(4) *Other services and materials.* Where OFHEO elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

14. Amend § 1710.23 by revising paragraph (g) to read as follows:

§ 1710.23 Fees to be charged-categories of requesters.

* * * * *

(g) For purposes of paragraph (e) of this section, the term "search time" has as its basis, manual search. To apply this term to searches made by computer, OFHEO will determine the hourly cost of operating the computer equipment and the operator's time determined as described in paragraph (b)(1)(i) of § 1710.22. When the cost of the search (including the operator's time and the cost of operating the computer equipment to process a request) equals the equivalent dollar amount of two hours of the time of the person performing the work, *i.e.*, the operator, OFHEO will begin assessing charges for the computer.

Subpart E—Testimony and Production of Documents in Legal Proceedings in Which OFHEO Is Not a Named Party

15. Amend § 1710.38 by revising paragraph (a) to read as follows:

§ 1710.38 Fees.

* * * * *

(a) *Searches for documents.* OFHEO will charge for the actual search time of the employee performing the work, billed in 15-minute segments, as described in § 1710.22(b)(i).

* * * * *

Dated: May 22, 2000.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 00–13194 Filed 5–24–00; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–07]

Proposed Modification of Class E Airspace, Wenatchee, WA

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to modify the Wenatchee, WA, Class E airspace to remove the Fancher Field airspace exclusion at the Panghorn Memorial Airport, Wenatchee, WA.

DATES: Comments must be received on or before July 10, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manger, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional 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 Manger, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–07, 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 ethos comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ANM–07." 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 interest 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 modifying Class E airspace at Wenatchee, WA, in order to remove the Fancher Field airspace exclusion in the legal description for the Panghorn Memorial Airport, Wenatchee, WA. Fancher Field has been abandoned negating the requirement for it's Class E2 airspace exclusion. This airspace modification would delete the airspace requirement for Fanche Field and correct the legal description for Wenatchee, WA. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route 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 Wenatchee 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 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 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 invokes 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E2 Wenatchee, WA

Wenatchee, Panghorn Memorial Airport, WA (Lat. 47°23'55" N, long. 120°12'24" W)

Within a 4 mile radius of Panghorn Memorial Airport, and within a 2.7 miles each side of the Wenatchee VOR/DME 124° radial extending from the 4-mile radius to 7 miles southeast of the VOR/DME.

* * * * *

Issued in Seattle, Washington, on May 12, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–13175 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6704–8]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Minnesota has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). These changes include granting the State authority for the wood preserving rules, petroleum refinery sludge listings, and technical amendments to existing regulations. EPA proposes to grant final authorization to Minnesota. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You

may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by June 26, 2000.

ADDRESSES: Send written comments referring to Docket Number Minnesota ARA 8, to Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. Please refer to Docket Number MN ARA 8. You can examine copies of the materials submitted by Minnesota during normal business hours at the following locations: Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, contact Nathan Cooley (651) 297–7544, and EPA Region 5, contact Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

FOR FURTHER INFORMATION CONTACT: Gary Westefer at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: May 3, 2000.

Elissa Speizman,

Acting Regional Administrator, Region 5 .

[FR Doc. 00–12954 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–999; MM Docket No. 00–74; RM–9862]

Radio Broadcasting Services; Sterling, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Ling Broadcasting requesting the allotment of Channel 248C3 to Sterling, Colorado, as that locality's third local FM transmission service. Coordinates used for this proposal are 40–37–32 NL and 103–12–25 WL.

DATES: Comments must be filed on or before June 26, 2000, and reply comments on or before July 11, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: A. Wray Fitch, III, Esq., Gamon & Grange, P.C., 8280 Greensboro Drive, 7th Floor, McLean, VA 22102–3807.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–74, adopted April 26, 2000, and released May 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13141 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–999; MM Docket No. 00–75; RM–9863]

Radio Broadcasting Services; Kahului, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by New West Broadcasting requesting the allotment of Channel 223C2 to Kahului, HI, as that community's second local FM transmission service. Coordinates used for this proposal are 20–50–24 NL and 156–23–14 WL.

DATES: Comments must be filed on or before June 26, 2000, and reply comments on or before July 11, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: New West Broadcasting, c/o Robin B. Thomas, President, 1001 Weatherby Drive, Cheyenne, WY 82007.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–75, adopted April 26, 2000, and released May 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13140 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–999; MM Docket No. 00–73; RM–9861]

Radio Broadcasting Services; Hornbrook, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Logan and Company requesting the allotment of Channel 255A to Hornbrook, California, as that locality's first local aural transmission service. As Hornbrook is not incorporated or listed in the U.S. Census, information is requested regarding the attributes of that locality to determine whether it is a *bona fide* community for allotment purposes. Coordinates used for this proposal are 41–53–06 NL and 122–35–03 WL.

DATES: Comments must be filed on or before June 26, 2000, and reply comments on or before July 11, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: James A. Koerner, Esq., Koerner & Olender, P.C., 5809 Nicholson Lane, Suite 124, North Bethesda, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–73, adopted April 26, 2000, and released May 5, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13139 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–946, MM Docket No. 99–237; RM–9663]

Radio Broadcasting Services; Medina, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document denies a petition for rule making filed by Medina Radio Broadcasting Company requesting the allotment of Channel 296A at Medina, Texas. *See* 64 FR 36324, July 6, 1999. This document in this proceeding questioned community status and requested commenting parties to present the Commission with information demonstrating community status. Based on the totality of evidence submitted, we do not believe that Medina qualifies as a community for allotment purposes and that it would not serve the public interest to make a channel allotment in response to Medina Radio's proposal.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–237, adopted April 19, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–13136 Filed 5–24–00; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 570

[APD 2800.12B, Case No. GSAR 5–422]

RIN 3090–AH03

General Services Administration Acquisition Regulation: Tax Adjustment

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the General Services Administration Acquisition Regulation (GSAR) by adding a new clause Tax Adjustment, and by revising the section GSAR contract clauses.

DATES: Comments should be submitted on or before July 24, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4027, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Cecelia L. Davis, GSA Acquisition Policy Division, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Background

GSA proposes to amend the GSAR by revising Parts 552 and 570 to prescribe and to incorporate a new clause 552.270–30, Tax Adjustment. The clause will be incorporated in acquisitions of leasehold interest in real property when GSA determined that a tax adjustment is necessary.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

GSA does not expect this proposed rule to have a significant economic impact on a substantial number of small

entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule simply provides a mechanism for adjusting rent to account for changes in real estate taxes.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subject in 48 CFR Part 552 and 570

Government procurement.

Accordingly, GSA proposes to amend 48 CFR Part 552 and 570 as follows:

1. The authority citation for 48 CFR Parts 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 552.270–30 is added to read as follows:

552.270–30 Tax Adjustment

As prescribed in 570.603, inset the following clause:

Tax Adjustment (Date)

(a) *Definitians.* "Base year taxes," as used in this clause, mean the real estate taxes for the first twelve (12) month period coincident with full assessment, or an amount negotiated by the parties that reflect an agreed on base for a fully assessed value of the property.

"Full assessment," as used in this clause, means that the taxing jurisdiction has considered all contemplated improvements to the assessed property in the valuation of the same. Partial assessments for newly constructed projects or for projects or for projects under construction, conversion, or renovation will not be used for establishing the Government's base year for taxes.

"Real estate taxes," as used in this clause, mean only those taxes assessed against the building or the land on which the building is located, without regard to benefit to the property, for the purpose of funding general government services. Real estate taxes shall not include general or special assessments, business improvement district assessments, or any other present or future taxes or governmental charges imposed on Lessor or assessed against the building or the land upon which the building is located.

(b) *Adjustment far changes in real estate taxes.* This lease provides for adjustments due to changes in real estate taxes on land and buildings occupied by the Government under this lease. Adjustments shall apply to each tax year during the lease term after the base tax year. Under the procedures established in this clause, the Government shall either:

(1) Make a single annual lump sum payment to the Lessor for its share of any increase in real estate taxes during the lease term over the amount established as the base year taxes.

(2) Receive an annual rental credit or lump sum payment from the Lessor for its share of any decreases in real estate taxes during the lease term below the amount established as the base year taxes.

(c) *Natices regarding real estate taxes.* The Lessor shall furnish the Contracting Officer with copies of each of the following within ten (10) calendar days of receipt:

(1) Any notice which may affect the valuation of land and buildings covered by this lease for real estate tax purposes.

(2) Any notice of a tax credit or tax refund related to land and buildings covered by this lease.

(3) Each tax bill related to land and building covered by this lease.

(d) *Increases in real estate taxes.* The following procedures apply for any tax year in which the real estate taxes increase over the base year taxes.

(1) *Invaice.* The Lessor shall submit a proper invoice (as described in the Prompt Payment clause of this lease, GSAR 552.232–75) for the tax adjustment. The invoice must include the calculation of the adjustment for the tax year. The Lessor must also provide a copy of all paid tax receipts for the tax year with the invoice. If the taxing authority does not give tax receipts, the Lessor must provide other similar evidence of payment acceptable to the Contract Officer. The Lessor must submit the invoice together with tax receipts or other evidence of payment no later than sixty (60) days after the date that the final tax payment for the year is due from the Lessor to the taxing authority.

(2) *Payment.* Upon receipt of a proper invoice and evidence of payment, the Government shall make payment no later than thirty (30) days after receipt of the invoice or thirty (30) days after the anniversary date of the lease, whichever is later. If the lease terminates before the end of a tax year, payment for the tax increase due will be prorated based on the number of days the Government occupied the space.

(3) *Waiver af right ta adjustment.* If the Lessor fails to submit a proper invoice and tax receipts or other evidence of payment within sixty (60) days after the date that the final tax payment for the year is due, then the Lessor waives its right to receive payment for the increased taxes under this clause.

(e) *Decreases in real estate taxes.* The following procedures apply for any tax year in which the real estate taxes decrease from the base year taxes or during which the Lessor receives a refund or tax deduction for real estate taxes.

(1) The Government shall be entitled to and shall receive a pro rata credit for the reduction in taxes, regardless of whether the Government has not yet made the tax payment for that year.

(2) During the lease term, the Government shall apply any credit as a deduction from the rent.

(3) For any credit due after the expiration or earlier termination of the lease, at the Contracting Officer's direction, the Lessor shall either make a lump sum payment to the Government or provide a rental credit under a succeeding lease. This includes, but is not limited to, credits resulting from a tax decrease pursuant to a tax credit due the Lessor, a reduction in the tax assessment, or a tax appeal proceeding for a year or a portion of the lease. If directed to remit a lump sum payment, the Lessor must make payment to the Government within fifteen (15) days of the Contracting Officer's direction. If the credit due the Government is not paid by the due date, interest shall accrue on the late payment at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) in effect on the day after the due date. The Government shall have the right to pursue the outstanding balance of any tax credit using all collection methods available to the United States to collect debts. Such collection rights survive the expiration of this lease.

(f) *Calculating tax share.* The Government shall pay its share of tax increases or receive its share of any tax decrease based on the ratio of the rentable square feet occupied by the Government to the total rentable square feet in the building or complex (percentage of occupancy). For this lease, the Government's percentage of occupancy as of the effective date of the lease is __%. This percentage shall take into account additions or reductions of the amount of space as may be contemplated in this lease or amendments hereto. The block and lot/parcel or other identification numbers for the property, building(s) and parking areas(s) occupied under this lease are ____.

(g) *Appeals ta tax assessments.* The Government may direct the Lessor upon reasonable notice to initiate a tax appeal or the Government may decide to contest a tax assessment on behalf of both the Government and the Lessor or for the Government alone. The Lessor shall furnish to the Government information necessary for appeal of the tax assessment in accordance with the filing requirements on its own behalf or on behalf of both the Government and the Lessor, the Lessor shall cooperate and use all reasonable efforts including, but not limited to, affirming the accuracy of the documents, executing documents required for any legal proceeding, and taking such other actions as may be required. If the Lessor initiates an appeal on behalf of the Government, the Government and the Lessor will enter into an agreement to establish a method for sharing expenses and tax savings.

(End of Clause)

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

3. Section 570.603 is amended by adding a new prescription at the end of the section to read as follows:

570.603 GSAR contract clauses.

* * * * *

552.270–30 Tax Adjustment. Insert this clause in solicitations and contracts if you determine that a tax adjustment is necessary.

Dated: May 17, 2000.

Sue McIver,

Acting Deputy Associated Administrator for Acquisition Policy.

[FR Doc. 00–13157 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 051600A]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to receive comments on its proposed Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico (FMP). Amendment 7 proposes to extend Florida's trap certificate program for the commercial stone crab fishery into Federal waters off the west coast of Florida. The objective of this program is to reduce, over time, the number of traps used in the fishery to an optimum number necessary to harvest the maximum sustainable yield (MSY).

DATES: The Council will accept written comments on the proposed amendment through June 26, 2000. The public hearings will be held in June. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619. Copies of draft Amendment 7 are available from Mr. Wayne Swingle, Executive Director, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815; fax: 813–769–4520. See **SUPPLEMENTARY INFORMATION** for specific hearing locations.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: There are about 1.4 million stone crab traps off Florida; the Florida Fish & Wildlife Conservation Commission (FFWCC) estimates that it would take only 600,000 traps to take the MSY from this fishery. The FFWCC, after working with the stone crab industry and Council over the past 4 years, has adopted a rule, effective July 1, 2000, under which a State trap certificate program will gradually reduce the number of traps over a 30-year period. This is a certificate-based attrition program that "grandfathers" fishermen into the program with their present number of traps and then will reduce slowly the trap numbers to the optimum level by reducing the number of certificates whenever they are sold. The Florida Legislature recently authorized license and penalty fees for this certificate program.

Time and Location for Public Hearings

Public hearings for Amendment 7 will be held at the following locations, dates, and times.

1. June 6, 2000, 7 p.m., Naples Depot Civic Cultural Center, 1051 Fifth Avenue South, Naples, Florida 34102; telephone: 941–262–1776.

2. June 7, 2000, 7 p.m., Banana Bay Resort & Marina, 4590 Overseas Highway, Marathon, Florida 33050; telephone: 305–743–3500.

3. June 13, 2000, 7 p.m., Jaycee Building, 501 SE 7th Avenue, Crystal River, Florida 34429; telephone: 352–795–4217.

4. June 14, 2000, 7 p.m., Steinhatchee Elementary School, 1st Avenue South, Steinhatchee, Florida 32359; telephone: 352–498–3303.

The Council will also hear public testimony before taking final action on Amendment 7 on July 12, 2000, at its meeting in Key Largo, Florida.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council office (see **ADDRESSES**) by May 30, 2000.

Dated: May 19, 2000.

Bruce Moorehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13187 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–22–U

Notices

Federal Register
Vol. 65, No. 102
Thursday, May 25, 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

Agricultural Marketing Service

[TM–00–06]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: June 6, 2000, from 9 a.m. to 5 p.m., and June 7, 2000, 9 a.m. to 5 p.m. (Eastern Daylight Time each day).

PLACE: Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 418–6800.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, Room 2945–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging Standards; Livestock Standards; Accreditation; Materials; and International Issues.

In August of 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture. Since that time the NOSB has submitted 30 addenda to its recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held on March 21–22, 2000, in Buena Park, California.

The Department of Agriculture (USDA) published its re-proposed National Organic Program regulation in the **Federal Register** on March 13, 2000 (65 FR 13512). Comments are being accepted until June 12, 2000. Comments may be submitted to: Keith Jones, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, Room 2945–So., Ag Stop 0275, PO Box 96456, Washington, DC 20090–6456. Comments also may be sent by fax to (703) 365–0760 or filed via the Internet through the NOP's homepage at: http://www.ams.usda.gov/nop. Comments should be identified with docket number TMD–00–02–PR.

Purpose and Agenda

The principal purposes of this meeting are to provide an opportunity for the NOSB to receive committee reports; approve the NOSB's comment to the re-proposed National Organic Program regulation; vote on whether to recommend the addition of ethylene gas and amino acids to the National List; elect new officers of the NOSB; and receive an update regarding certification of aquatic animals from the USDA. Copies of the NOSB final meeting agenda can be requested from Mrs. Toni Strother, USDA–AMS–TMP–NOP, Room 2510–So., Ag Stop 0268, P.O. Box 96456, Washington, D.C. 20090–6456; by phone at (202) 720–3252; or by accessing the NOP website at http://www.ams.usda.gov/nop after May 23, 2000.

Type of Meeting

This meeting is open to the public. The NOSB has scheduled time for public input on Tuesday, June 6, 2000, from 1:30 p.m. until 4:00 p.m. at the Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202. Telephone: (703) 418–6800. Individuals and organizations wishing to make an oral presentation at the meeting should forward the request to Mrs. Strother at the above address or by FAX to (202) 205–7808 by close of business June 2, 2000. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement the oral presentation with additional material. Written comments may be submitted to the NOSB at the meeting or to Mrs. Strother after the meeting at the above address.

Dated: May 23, 2000.

Sharon Bomer Lauritsen

Acting Deputy Administrator, Transportation and Marketing

[FR Doc. 00–13289 Filed 5–23–00; 1:35 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–2000]

Foreign-Trade Zone 193–Pinellas County, FL; Application for Subzone Status, Amendment of Application—RP Scherer Corporation (Gelatin Capsules)

Notice is hereby given that the application of the Pinellas County Board of County Commissioners, grantee of FTZ 193, requesting authority for special-purpose subzone status for the gelatin capsule manufacturing facilities of RP Scherer Corporation (Scherer) located in the St. Petersburg/Clearwater area, Pinellas County, Florida (65 FR 5308, 2/3/00), has been amended to expand the proposed use of zone procedures at the Scherer plant to include the manufacture of a new anti-AIDS drug, using foreign and domestic ingredients. The foreign ingredients include Lopinavir (HTSUS 2933.59.7000—9.3% duty rate). The finished product is classified under HTSUS 3004.70.9010 and is duty free. Scherer will be finishing and encapsulating the finished drug under contract for Abbott Laboratories, Inc.,

which has authority from the FTZ Board to produce the drug under zone procedures at its Chicago, Illinois, plant.

The application remains otherwise unchanged.

The comment period is reopened until June 26, 2000.

Dated: May 17, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–13098 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802]

Preliminary Determination of Critical Circumstances: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Dennis McClure, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–4126 or 482–0984, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (April 1999).

Background

On February 4, 2000, the Department published the preliminary affirmative determination in the antidumping duty investigation on certain small diameter carbon and alloy seamless standard, line and pressure pipe (seamless pipe) from the Czech Republic, 65 FR 5599. On April 18, 2000, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of seamless pipe from the Czech Republic.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) The volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

History of Dumping and Importer Knowledge

Because we are aware of the European Union's (EU's) November 17, 1997, finding that the Czech Republic had sold similar products (*e.g.*, seamless pipes, of iron or non-alloy steel) at less than fair value and had caused injury to the domestic industry, we find that a reasonable basis exists to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, pursuant to section 733(e)(1)(A)(i) of the Act. Although the products investigated by the EU are not all identical to those covered by the scope of this investigation, we do not require the scope of our proceedings to match exactly the scope of the foreign proceeding. *See Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China*, 60 FR 22359, 22368 (May 5, 1995). In addition, the Department may look to the second criterion for determining importer knowledge of dumping.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling the seamless pipe at less than fair value, pursuant to section 733(e)(1)(A)(ii) of the Act, the Department's normal practice is to consider margins of 25 percent or more for export price (EP) sales sufficient to impute knowledge of dumping. *See Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). In the instant case, the respondent, Nova Hut, received a margin of 32.26 percent in the amended preliminary determination, 65 FR 12971. Therefore, we have imputed knowledge of dumping to importers of subject merchandise from Nova Hut.

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, under section 733(e)(1)(A)(ii) of the Act, the Department normally will look to the preliminary injury determination of the International Trade Commission (ITC). If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that there was likely to be material injury by reason of dumped imports. In this case, the ITC has found that a reasonable indication of present material injury due to dumping exists for all imports of seamless pipe from the Czech Republic. *See Certain Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania and South Africa*, 64 FR 46953 (August 27, 1999). As a result, the Department has determined that there is a reasonable basis to believe or suspect that importers knew or should have known that there was likely to be material injury by reason of dumped imports of subject merchandise from the Czech Republic.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to 733(e)(1)(B) of the Act, the Department normally compares the import volume of the subject merchandise for three months immediately preceding and following the filing of the petition. Imports normally will be considered massive

when imports have increased by 15 percent or more during this "relatively short period."

We do not have verifiable data from Nova Hut because it withdrew from verification. Therefore, the Department must base its "massive imports" determination as to the company on the facts available, pursuant to section 776(a) of the Act.[1] Accordingly, we first examined U.S. Customs data [2] on imports of seamless pipe from the Czech Republic for January through June 1999 (the six months preceding the June 30, 1999, filing of the petition) and from July through December 1999 (the six months following the filing of the petition).[3] We found that the total volume of imports of small diameter seamless pipe from the Czech Republic increased by 45.75 percent in the six-month period following the filing of the petition (July through December 1999), as compared to the total volume of such imports from January through June 1999. Second, we considered that Nova Hut, the sole respondent in the investigation, was the only company identified by both the petitioner and the Government of the Czech Republic as a Czech producer of merchandise under investigation. From this we infer that Nova Hut is a significant producer of the merchandise under investigation. As facts available, then, we also infer that a significant portion of the 45.75 percent increase in imports is attributable to Nova Hut. We recognize that some of the HTS categories analyzed to derive the 45.75 percent increase in imports are basket categories that may include non-scope merchandise. However, given that Nova Hut's refusal to supply verifiable data prevents the Department from doing a company-specific massive imports analysis, we are, pursuant to section 776(b) of the Act, making the adverse inference that the country-wide import data is representative of Nova Hut's import data. Moreover, the Department's practice has been to make an adverse inference concerning massive imports with respect to an uncooperative respondent even when country-wide data was not available or not considered. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51437 (October 1, 1997). We, therefore, find that Nova Hut had massive imports of the subject merchandise over a relatively short period of time, under section 733(e)(1)(B) of the Act and 19 CFR 351.206(h)(2).

Based on our determination that there is a reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports of the subject merchandise in the EU, as well as importer knowledge of dumping, and that there have been massive imports of seamless pipe from this producer over a relatively short period, we preliminarily determine that critical circumstances exist for imports from the Czech Republic of seamless pipe produced by Nova Hut.

All Other Exporters

In regard to the "all others" category, it is the Department's normal practice to conduct its critical circumstances analysis based on the experience of investigated companies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebars from Turkey)*, 62 FR 9737, 9741 (March 4, 1997). In *Rebars from Turkey*, the Department determined that because it found critical circumstances existed for three out of the four companies investigated, critical circumstances also existed for companies covered by the "all others" rate. However, in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan (Stainless Steel from Japan)*, 64 FR 30574 (June 8, 1999), the Department did not extend its affirmative critical circumstances findings to the "all others" categories while finding affirmative critical circumstances for four of the five respondents, because the affirmative determinations were based on adverse facts available.

In the instant case, in our critical circumstances analysis for the one investigated company, Nova Hut, we determined that the EU's finding that the Czech Republic had sold similar products at less than fair value and had caused injury to the domestic industry provides reasonable basis to believe or suspect that there is a history of dumping and material injury by reason of dumped imports in this case. Consistent with our practice, we similarly extend this finding to the "all others" category.

With respect to massive imports, however, we are unable to rely on our import level analysis for Nova Hut because it is based upon adverse facts available, and we have no verified data upon which to base a massive imports analysis. Instead, consistent with the approach taken in *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24239 (May 6, 1999) and *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand* 65 FR 5220, 5227 (February 4, 2000), we examined U.S. Customs data on overall imports from the Czech Republic for the six months preceding and the six months following the filing of the petition in order to see if we could ascertain whether an increase in shipments of greater than 15 percent or more occurred within a relatively short period following the point at which importers had reason to believe that a proceeding was likely. Information on the record indicates that there was a 45.75 percent increase in overall imports from the Czech Republic for the six months following the filing of the petition, as compared to the six months preceding the filing of the petition. However, these data cover numerous HTS categories that may include merchandise other than subject merchandise. Although we made an adverse inference based on this data with respect to Nova Hut, it is not appropriate to make a similar inference with respect to "all others." Because we have no reliable data upon which to determine whether there were massive imports of seamless pipe from the producers included in the "all others" category, a necessary criterion for determining affirmative critical circumstances has not been met. Therefore, we have preliminarily determined that critical circumstances do not exist for imports from the Czech Republic of seamless pipe for companies in the "all others" category.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, the Department will direct the Customs Service to suspend liquidation of all entries of seamless pipe from the Czech Republic produced by Nova Hut, that are entered, or withdrawn from warehouse, for consumption on or after November 6, 1999, which is 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin reflected

[1] Because the respondent withdrew from verification, we considered the company non-cooperating and did not request monthly shipment data from the company.

[2] IM–145 import statistics on HTS numbers included within the scope of the investigation.

[3] As stated in *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia* (64 FR 73164, December 29, 1999), the Department's practice is to use the longest period for which information is available from the month that the petition was submitted through the date of the preliminary determination.

in the preliminary determination of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice. The margin in the preliminary determination is as follows: Nova Hut—32.26 percent.

Final Critical Circumstances Determination

We will make final critical circumstances determinations when we issue our final determination in the less-than-fair-value investigation, which is due to be made no later than June 19, 2000.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

This notice is published pursuant to section 777(i) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13097 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an antidumping duty investigation of Bulk Aspirin from the People's Republic of China. We determine that sales have been made at less than fair value. The estimated dumping margins are shown in the Continuation of Suspension of Liquidation section of this notice.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Ryan Langan or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3853, 482–1279, or 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations codified at 19 CFR part 351 (1998).

Case History

Since the preliminary determination (*see* 65 FR 116 (January 3, 2000) ("*Preliminary Determination*")), the following events have occurred:

On December 28, 1999, one of the respondents, Shandong Xinhua Pharmaceutical Factory ("Shandong"), requested a postponement of the final determination and, on January 4, 2000, requested an extension of provisional measures. On January 20, 2000, we published in the **Federal Register** a notice of postponement of the final determination and extension of provisional measures (65 FR 3204).

Supplemental information regarding surrogate values was submitted on February 14, 2000, by the petitioner and respondents.

In February and March 2000, we conducted verification of the questionnaire responses submitted by Shandong and Jilin Pharmaceutical Import and Export Corporation ("Jilin"). We issued reports on our findings of these verifications on April 5, 2000.

The petitioner and respondents filed case briefs and rebuttal briefs on April 12 and April 19, 2000, respectively. At the request of the petitioner and respondents, the Department held a public hearing on April 25, 2000.

We also received a case brief from Dastech International, Inc. ("Dastech"), an interested party in this investigation. After reviewing Dastech's comments, we determined that the information contained in Dastech's brief constituted factual information that was filed on an untimely basis as set forth in section 351.301 of the Department's regulations. Therefore, pursuant to section 351.302(d) of the Department's regulations, we removed Dastech's submission from the record, and did not consider the comments for the final determination. *See* "Rejection of Interested Party's Brief" Memorandum to Richard W. Moreland, Deputy Assistant Secretary, Import Administration, dated May 17, 2000.

Scope of the Investigation

For purposes of this investigation, the product covered is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho-acetylsalicylic acid or as mixed ortho-acetylsalicylic acid. Pure ortho-acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula $C_9H_8O_4$. It is defined by the official monograph of the United States Pharmacopoeia ("USP") 23. It is classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 2918.22.1000.

Mixed ortho-acetylsalicylic acid consists of ortho-acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is classified under HTSUS subheading 3003.90.0000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of this investigation ("POI") is October 1, 1998, through March 31, 1999.

Nonmarket Economy Country and Market-Oriented Industry Status

The Department has treated the People's Republic of China ("PRC") as a nonmarket economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255 (December 31, 1998) ("*Mushrooms*"). Under section 771(18)(C) of the Act, this NME designation remains in effect until it is revoked by the Department.

The respondents in this investigation have not requested a revocation of the PRC's NME status and no further information has been provided that would lead to such a revocation. Therefore, we have continued to treat the PRC as an NME in this investigation.

Furthermore, no interested party has requested that the bulk aspirin industry in the PRC be treated as a market-oriented industry and no further information has been provided that would lead to such a determination. Therefore, we have not treated the bulk

aspirin industry in the PRC as a market-oriented industry in this investigation.

Separate Rates

All responding companies have requested separate, company-specific antidumping duty rates. In our *Preliminary Determination,* we preliminarily found that all responding companies had met the criteria for the application of separate antidumping duty rates. *See* 65 FR at 3204. At verification, we found no discrepancies with the information provided in the questionnaire responses of responding companies. We have not received any other information since the *Preliminary Determination* which would warrant reconsideration of our separate rates determinations with respect to these companies. We, therefore, determine that the responding companies in this investigation should be assigned individual dumping margins.

PRC-Wide Rate

As stated in the preliminary determination, information on the record of this investigation indicates that there are numerous producers/exporters of the subject merchandise in the PRC in addition to the companies participating in this investigation. U.S. import statistics show that the responding companies did not account for all imports of bulk aspirin into the United States from the PRC. Given this discrepancy, it appears that not all PRC exporters of bulk aspirin responded to our questionnaire. Accordingly, we are applying a single antidumping deposit rate ("the PRC-wide rate") to all bulk aspirin exporters in the PRC except those specifically identified in the "Continuation of Suspension of Liquidation" section of this notice.

Use of Facts Available

As explained in the preliminary determination, the PRC-wide antidumping rate is based on adverse facts available, in accordance with section 776 of the Act. Section 776(a)(2) of the Act provides that "if an interested party or any other person— (A) withholds information that has been requested by the administering authority or the Commission under this title, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." Use of facts available is warranted in this case because the producers/exporters other than those under investigation have failed to respond to the Department's questionnaire.

Section 776(b) of the Act provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. The producers/exporters that decided not to respond in any form to the Department's questionnaire, failed to act to the best of their ability in this investigation. Further, absent a verifiable response from these firms, we must presume government control of these PRC companies. Thus, the Department has determined that, in selecting from among the facts otherwise available, an adverse inference is warranted and has assigned them a common, PRC-wide rate based on adverse inferences.

In accordance with our standard practice, as adverse facts available, we are assigning to the PRC-wide entity (*i.e.*, those companies not receiving a separate rate), which did not cooperate in the investigation, the higher of: (1) the highest margin stated in the notice of initiation; or (2) the highest margin calculated for any respondent in this investigation. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Japan*, 63 FR 40434 (July 29, 1998). In this case, the adverse facts available margin is 144.02 percent, the margin from the petition, which is higher than the margin calculated for any respondent in this investigation.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on "secondary information," such as the petition, the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103–316 (1994) ("SAA"), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. As discussed in the *Preliminary Determination*, we determine that the calculations set forth in the petition have probative value.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the May 17, 2000, Decision Memorandum which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the internet at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our *Preliminary Determination*, where applicable. Any programming or clerical errors are discussed in the relevant sections of the Decision Memorandum or in the company-specific final determination calculation memoranda dated May 17, 2000.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by respondents.

Continuation of Suspension of Liquidation

In accordance with section 735(c) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of the subject merchandise from the PRC, except for merchandise both produced and exported by Jilin (which had a zero margin at the *Preliminary Determination*), that are entered, or withdrawn from warehouse, for consumption on or after January 3, 2000, the date of publication of the *Preliminary Determination* in the **Federal Register**. With respect to Jilin, Customs shall suspend liquidation of all imports of the subject merchandise from the PRC, produced and exported by Jilin that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount

by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Shandong Xinhua Pharmaceutical Factory	42.77
Jilin Pharmaceutical Co., Ltd./. Jilin Pharmaceutical Import and Export Corporation	4.72
PRC-wide Rate	144.02

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters that are identified individually above.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: May 17, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Adminstration.

Appendix

List of Comments in the Issues and Decision Memorandum

Comment 1: Valuation of Phenol
Comment 2: Valuation of Caustic Soda
Comment 3: Valuation of Carbon Dioxide
Comment 4: Valuation of Overhead, Selling, General, Administrative Expenses and Profit
Comment 5: Adjustments to Surrogate Ratios
Comment 6: Valuation of Electricity
Comment 7: Valuation of Water
Comment 8: Valuation of Ocean Freight
Comment 9: Returned Merchandise
Comment 10: Separate Rates
Comment 11: Shandong's Use of Technical-Grade Salicylic Acid
Comment 12: Jilin's Raw Material Consumption
Comment 13: Jilin's By-Product Offset
Comment 14: Jilin's Inland Freight Costs for Materials
Comment 15: Jilin's Multiple Shipments

[FR Doc. 00–13095 Filed 5–24–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839, A–583–833]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney (Republic of Korea) or Cynthia Thirumalai (Taiwan), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1778 or (202) 482–4087, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the regulations codified at 19 CFR part 351 (1998).

Scope of Orders

The product covered by these orders is certain polyester staple fiber ("PSF"). Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these orders may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from these orders. Also specifically excluded from these orders are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from these orders. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to these orders is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of these orders is dispositive.

Amended Final Determination

In accordance with section 735(a) of the Act, on March 30, 2000, the Department published the final determination of the antidumping duty investigation of certain PSF from the Republic of Korea ("Korea"), in which we determined that U.S. sales of PSF from Korea were made at less than normal value (65 FR 16880 ("*Korea Final Determination*")). On March 31 and April 4, 2000, we received ministerial error allegations, timely filed pursuant to § 351.224(c)(2) of the Department's regulations, from the petitioners E.I. DuPont de Nemours, Inc.;[1] Arteva Specialities S.a.r.l.; d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (hereinafter collectively referred to as "the petitioners") regarding the calculations for Geum Poong Corporation ("Geum Poong") and Samyang Corporation ("Samyang"), respectively. On April 5, 2000, Sam Young Synthetics Co. ("Sam Young") and Geum Poong timely filed ministerial allegations, and Geum Poong also commented on the petitioners' allegations. On April 6, 2000, Samyang filed a rebuttal to the petitioners' ministerial error allegations. We received comments from the petitioners concerning the respondents' clerical error allegations on April 10, 2000.

We have determined in accordance with section 735(e) of the Act that ministerial errors were made in our final margin calculations. For a detailed

[1] E.I. DuPont de Nemours, Inc. is not a petitioner in the Taiwan case.

discussion of the above-cited ministerial errors and the Department's analysis, see Memorandum to Richard W. Moreland, dated April 26, 2000. We are amending the final determination of the antidumping duty investigation of PSF from Korea to correct these ministerial errors. The revised final weighted-average dumping margins are as follows:

Exporter/manufacturer	Original weighted-average margin percentage	Revised weighted-average margin percentage
Samyang Corporation	0.14	0.14
	(*	(*
Sam Young Synthetics Co.	7.96	7.91
Geum Poong Corporation	14.10	14.10
All Others	11.38	11.35

* de minimis.

For Taiwan, we published *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan* 65 FR 16877 (March 30, 2000) and *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan* 65 FR 24678 (April 27, 2000).

Antidumping Duty Orders

On May 15, 2000, in accordance with section 735(d) of the Act, the U.S. International Trade Commission ("ITC") notified the Department that an industry in the United States is "materially injured," within the meaning of section 735(b)(1)(A) of the Act, by reason of less-than-fair-value imports of PSF from Korea and Taiwan. In its final determination, however, the ITC determined that two domestic like products exist for merchandise covered by the Department's investigation: (1) low-melt PSF and (2) all other types of PSF not specifically excluded. The ITC determined pursuant to section 735(b)(1) that a domestic industry in the United States is not materially injured or threatened with material injury by reason of imports of low-melt PSF from Korea and Taiwan. Accordingly, the scope of these antidumping duty orders has been amended from that used in the investigations to exclude low-melt PSF.

Sam Young and Geum Poong, the two respondents included in the Korea order, did not make sales of low-melt PSF during the period of investigation. Therefore, it was not necessary to recalculate the margins to exclude sales of low-melt PSF for these Korean respondents. However, we recalculated, for purposes of the Taiwan order, the estimated dumping margins for both respondents in Taiwan by excluding sales of low-melt PSF from our analysis. The revised estimated dumping margins for Taiwan are found below.

The Department will direct the U.S. Customs Service to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the subject merchandise exceeds the export price or constructed export price of the subject merchandise for all relevant entries of PSF from Korea and Taiwan, except for subject merchandise produced in Korea and imported from Samyang, which received a *de minimis* final margin. With respect to Korea, all bonds may be released and entries by Samyang may be liquidated without regard to antidumping duties.

For all other manufacturers/exporters from Korea, antidumping duties will be assessed on all unliquidated entries of PSF, excluding low-melt PSF, entered, or withdrawn from warehouse, for consumption on or after November 8, 1999, the date of publication of the Department's preliminary determination in the **Federal Register** (64 FR 60776). For all other manufacturers/exporters in Taiwan other than Nan Ya Plastics Corporation, Ltd., antidumping duties will be assessed on all unliquidated entries of PSF, excluding low-melt PSF, entered, or withdrawn from warehouse, for consumption on or after March 30, 2000, the date of publication of the Department's final determination in the **Federal Register** (64 FR 60771). For Nan Ya Plastics Corporation, Ltd., antidumping duties will be assessed on all unliquidated entries of PSF from Taiwan, excluding low-melt PSF, entered, or withdrawn from warehouse, for consumption on or after April 27, 2000, the date of publication of the Department's amended final determination in the **Federal Register** (65 FR 24678). Furthermore, we will instruct Customs to refund all cash deposits, or bonds posted, for entries of subject merchandise from Korea imported from Samyang Corporation and for entries of low-melt PSF from both Taiwan and Korea.

On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Exporter/manufacturer	Revised weighted-average margin percentage
Republic of Korea	
Samyang Corporation	Excluded
Sam Young Synthetics Co	7.91
Geum Poong Corporation	14.10
All Others	11.35
Taiwan	
Far Eastern Corporation	11.50
Nan Ya Plastics Corporation, Ltd	3.79
All Others	7.31

This notice constitutes the antidumping duty orders with respect to PSF from Korea and Taiwan, pursuant to section 735(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with sections 736(a) and 19 CFR 351.211.

Dated: May 18, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–13096 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, June 13, 2000, Wednesday, June 14, 2000, and Thursday, June 15, 2000, from 9:00 a.m. to 5:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on June 13–15, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, North Campus, 820 West Diamond Avenue, Gaithersburg, MD in Lecture Room 152.

Agenda

As part of this meeting, a "security metrics" workshop will be held on June 13 and 14, 2000, to examine the approaches to measuring security. The following topics will be explored:

—Definitions of "metrics"
—Measures of security against specific security threats
—Measures of overall system security
—Qualitative measures, e.g., adherence to "standards" or checklists of practices
—Live, real-time measures of security in extended networks
—Use of statistically-sampled data in measurement systems
—Effective communications of metrics, assurance levels and risk management tradeoffs to executives, lawmakers, and the public so that risks and protections are properly understood in both business and public policy terms.

The first day of this workshop will be dedicated to presentations from the government, the private sector, and public sector organizations. The second day will consist of case studies presented by a government panel and an industry panel.

The last day of the meeting, Thursday, June 15, 2000, the Board will review the progress of the workshop and, as appropriate, plan or recommend follow-on activity. The Board will also devote discussion period to develop the Board's future program and to identify key issues.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board. It would be appreciated if 35 copies of written material were available for distribution to the Board and attendees at the meeting no later than June 5, 2000. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: May 18, 2000.

Jorge Urrutia,

Acting Director, NIST.

[FR Doc. 00–13144 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051900B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee and a number of joint meetings of its Groundfish Oversight Committee and Groundfish Advisory Panel in June, 2000. Recommendations from the these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

June 8, 2000, 10:00 a.m.—Social Sciences Advisory Committee Meeting

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

The committee will discuss the social and economic issues associated with measures proposed for Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The proposed measures include a rotational area management system for Atlantic sea scallops including possible access to the groundfish closed areas on Georges Bank and in Southern New England, modifications to trawl gear to require the same scallop selectivity as dredge gear, and a possible increase in the seven-person crew limit. The committee also will discuss the organization of workshops for improving social and economic analyses. Finally, the committee will receive an update on the work of the Council's Capacity Committee.

June 13, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting

Location: Howard Johnson's Motor Lodge, Interstate Traffic Circle, Portsmouth, NH 03801; telephone: (603) 436–7600.

The committee and advisors will conduct a joint meeting to continue development of management options for Amendment 13 to the Northeast Multispecies FMP. They also will consider options for developing an area management system, or for a sector allocation system. Work on these options will continue at all meetings to be held in June. In addition, the committee will continue to develop changes to current management measures that will improve the effectiveness of the existing management system. The goal is to develop management alternatives for review at public hearings in the fall of 2000. This same agenda will be followed for the following list of joint Groundfish Committee and Advisory Panel meetings.

June 20, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting.

Location: Radisson Hotel, 35 Governor Winthrop Boulevard, New London, CT 06320; telephone: (860) 443–7000.

June 27, 2000, 9:30 a.m.—Joint Groundfish Committee and Advisory Panel Meeting.

Location: Sheraton Inn—Providence Airport, 1850 Post Road, Warwick, RI 02886; telephone: (401) 738–4000.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting.

Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 22, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–13186 Filed 5–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Submission for OMB Review; Comment Request Entitled Subcontract Consent

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontract Consent. A request for public comments was published at 65 FR 14950 on March 20, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 26, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.

Responses Per Respondent: 3.61.

Total Responses: 15,349.

Average Burden Hours Per Response: .87.

Total Burden Hours: 13,353.

Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: May 22, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13145 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE GENERAL SERVICES ADMINISTRATION NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Submission for OMB Review; Comment Request Entitled Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Summary Subcontract Report. A request for public comments was published at 65 FR 14951, on March 20, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 26, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

B. Annual Reporting Burden

Number of Respondents: 4,253.
Responses Per Respondent: 1.66.
Total Responses: 7,098.
Average Burden Hours Per Response: 12.90.
Total Burden Hours: 90,854.
Obtaining Copies of Justifications: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: May 22, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–13146 Filed 5–24–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2383–000]

California Independent System Operator Corporation; Notice of Filing

May 19, 2000.

Take notice that on May 3, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an correction regarding a proposed amendment (Amendment No. 29), to the ISO Tariff, which had been filed in the above-referenced docket on May 2, 2000. The correction provided tariff sheets containing Tariff sections that were "rolled over" to subsequent pages of the Tariff, as a result of changes and additions made in the Amendment No. 29 filing, and corrected an error in the section numbering on a certain Tariff sheet that was included in the Amendment No. 29 filing.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal 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 May 30, 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. 00–13114 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–51–001]

East Tennessee Natural Gas Company; Notice of Amendment

May 19, 2000.

Take notice that on May 10, 2000, East Tennessee Natural Gas Company (East Tennessee), 1001 Louisiana, Houston, Texas 77002, filed with the Commission in Docket NO. CP00–51–001 an amendment to the pending application filed on December 17, 1999, in Docket No. CP00–51–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), to reflect change in the locations of meter stations, main line valves, and manifolds for which certificate authorization is sought, all as more fully set forth in the amendment which is open to the public for inspection.

By the pending application in Docket No. CP00–51–000, East Tennessee proposes to construct, install, and operate: (1) 15.16 miles of 12-inch diameter pipeline looping in Washington, Smyth, and Wythe Counties, Virginia; (2) three meter stations in McGinn, Greene, and Roane Counties, Tennessee, and a modficiation to an existing meter station in Morgan County, Tennessee; (3) approximately 0.62 miles of 22-inch diameter replacement pipe on East Tennessee's 3100 Line in Smith and Overton Counties, Tennessee. Finally, East Tennessee's 3100 Line: and (4) approximately 450 feet of 10-inch and 12-inch diameter replacement pipeline, in addition to two mainline valves on East Tennessee's 3200 Line at the Tennessee River Crossing. Additionally, East Tennessee seeks certain other authorizations, including authorization to up rate four compressor units located at Station 3101 in Robertson County, Tennessee, and Station 3210 in Marion County, Tennessee, and authorization to hydrostatically test to increase the Maximum Allowable Operating Pressure (MAOP) of 26.42 miles of pipe on East Tennessee requests that the Commission authorize the abandonment of approximately 0.62 miles of pipe being replaced align East Tennessee's 3100 Line plus 250 feet of pipe, two mainline valve assemblies and miscellaneous fittings and appurtenances being replaced along the 3200 Line by the above-referenced replacement pipe. East Tennessee submits that these activities are necessary to provide additional firm transportation service to eight customers on the part of East Tennessee's pipeline system located in eastern Tennessee and southwestern Virginia (Rocky Top Expansion Project).

In the subject amendment, East Tennessee seeks to modify its original request for certificate authority by requesting authorization to, *itner alia,* change the locations of the proposed Lenior City and Etowah meter stations. East Tennessee now proposes to construct, install, and operate the Lenior City meter station at Mile Post 3.99, instead of at Mile Post 4.35 south of Main Line Valve 3112–1 as originally proposed, on its 3100 Line in Roane County, Tennessee. East Tennessee also proposes to construct, install, and operate the Etowah meter station at mile Post 3.59 south of Main Line Valve 3217–1 as originally proposed, but on the other side of the road, on its 3200 Line in McMinn County, Tennessee.

East Tennessee also proposes to modify its original proposal with various changes in work space requirements and construction rights-of-way to meet the Commission's template. East Tennessee's other proposed modifications include the following:

(1) Additional temporay work spaces at Mainline Valve Section 3313, Virginia, and Mainline Valve Section 3105, Tennessee;

(2) Seven new hydrostatic testing manifold location in the vicinity of Mainline Valve Section 3105, Tennessee, and six new hydrostatic testing manifold locations in the vicinity of Mainline Valve Section 3107, Tennessee;

(3) Four new main line valves, replacement of main line valves, and one new relief valve in the vicinity of Mainline Valve Section 3105, Tennessee;

(4) One new relief valve in vicinity of Mainline Valve Section 3107, Tennessee;

(5) New access road in vicinity of Mainline Valve Section 3313, Virginia;

(6) Five temporary access roads in vicinity of Mainline Valve Section 3105, Tennessee, and four temporary access roads in vicinity of Mainline Valve Section 3107, Virginia—eight of these temporary access roads would be constructed within existing permanent rights-of-way:

(7) One temporary access road in vicinity of Tennessee River Crossing, Mainline valve Section 3213–1A1/1A2, Tennessee—this temporary access road would be constructed within an existing permanent right-of-way and existing road.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 9, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Any questions regarding the application should be directed to Susan T. Halbach, Senior Counsel, P.O. Box 2511, Houston, Texas 77252, phone number (713) 420–5751.

A person obtaining intervenor status will be place on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission. A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed document son all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13105 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA00–4–002]

Indianapolis Power & Light Company; Notice of Filing

May 19, 2000.

Take notice that on May 1, 2000, Indianapolis Power & Light Company (Indianapolis) submitted revised standards of conduct in response to the Commission's February 24, 2000 Order.[1]

Indianapolis states that it served copies of the filing to all parties on the service list, to the Indiana Utility Regulatory Commission and others on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 5, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Indianapolis's 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. 00–13107 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–286–000]

Koch Gateway Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

May 19, 2000.

Take notice that on May 16, 2000, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective June 15, 2000:

[1] 90 FERC ¶ 61,174 (2000).

Fifth Revised Volume No. 1

Seventh Revised Sheet No. 2
Fourth Revised Sheet No. 103
Fourth Revised Sheet No. 305
First Revised Sheet No. 606
Fourth Revised Sheet No. 719
Second Revised Sheet No. 1004
Fourth Revised Sheet No. 1410
Sixth Revised Sheet No. 1414
Second Revised Sheet No. 1502
Third Revised Sheet No. 1703
Seventh Revised Sheet No. 1808
Fourth Revised Sheet No. 1900
Second Revised Sheet No. 2002
Second Revised Sheet No. 2003
First Revised Sheet No. 2010
Ninth Revised Sheet No. 2700
Fourth Revised Sheet No. 2703
Fifth Revised Sheet No. 3702
First Revised Sheet No. 3900
Fourth Revised Sheet No. 5000
Tenth Revised Sheet No. 5200

Koch states that it has revised the above tariff sheets to reflect minor housekeeping changes for clarification of Koch's FERC Gas Tariff.

Koch states that copies of this filing have been served upon Koch's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13113 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–14–006]

Midwestern Gas Transmission Company; Notice of Negotiated Rate Filing

May 19, 2000.

Take notice that on May 15, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing certain Negotiated Rate Arrangements. Midwestern requests that the Commission approve the Negotiated Rate Arrangements effective November 1, 2000.

Midwestern states that the filed Negotiated Rate Arrangements reflect negotiated rates between Midwestern and Nicor Gas (Nicor) for transportation under Rate Schedule FT–A beginning November 1, 2000.

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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13112 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1962–000]

Pacific Gas & Electric Company; Notice of Meeting

May 19, 2000.

Take notice that there will be a full group meeting of the Rock Creek-Cresta Relicensing Collaborative on Monday, June 5, 2000, from 9 a.m. to 4 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Mark Robinson of the Commission's Office of Energy Projects has been invited to participate by phone for a brief update of the settlement status. Expected participants need to give their names to William Zemke (PG&E) at (415) 973–1646 so that they can get through security.

For further information, please contact Elizabeth Molloy at (202) 208–0771.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13108 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–77–000]

SkyGen Energy LLC v. Southern Company Services, Inc.; Notice of Complaint

May 19, 2000.

Take notice that on May 18, 2000, SkyGen Energy LLC (Complainant) filed with the Federal Energy Regulatory Commission a complaint against Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Respondent) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. According to the Complaint, Respondent wrongfully denied a request made by SkyGen Energy Marketing, LLC on behalf of SkyGen and Santa Rosa Energy LLC (Santa Rosa Energy) under its Open Access Transmission Tariff (OATT) because that denial is based upon repudiation of the executed interconnection agreement between the Complainant and Respondent. The Complainant alleges that Respondent is denying Complainant interconnection service (the ability to access its electrical system) and its request for transmission service.

According to the Complainant, Respondent has planned the addition of its own generation to the Southwest Quadrant of its system while ignoring the addition of Complainant's Facility to the system already accomplished by the executed interconnection agreement. Now, on the basis that the Respondent cannot honor the Complainant's interconnection agreement by adding its

Facility to the Southwest Quadrant, Respondent has denied Complainant's request for firm transmission service.

Complainant also asserts that Respondent has failed to consider reassignment of transmission capacity reserved for native load use but not currently needed or used, operating restrictions and/or special protection systems, or redispatch to accommodate Complainant's request for firm transmission service. According to the Complaint, Respondent has refused to expeditiously use a Power System Stabilizer solution it has used in order to accommodate its own generation, and which has been demonstrated to be a means that can accommodate Respondent's request for firm transmission service.

Questions concerning the Complaint may be directed to counsel for Complainant, Robert L. Daileader, Jr., Nixon Peabody LLP, Suite 700, One Thomas Circle, NW, Washington, DC 20005, Phone 202/457–5318, Fax 202/457–5355, e-mail rdaileader@nixonpeabody.com.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 31, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http:/www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before May 31, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13106 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP96–312–028]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

May 19, 2000.

Take notice that on May 15, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing certain Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective November 1, 2000.

Tennessee states that the filed Negotiated Rate Arrangement reflects negotiated rates between Tennessee and Nicor Gas ("Nicor") for transportation under Rate Schedule FT–A beginning November 1, 2000.

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, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13111 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Dam Remediation Work and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to deviate from the target minimum flow required by article 39 below Blue Lake and Rucker Lake during necessary dam remediation.

b. *Project No.* 2310–106.

c. *Date Filed:* May 9, 2000.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* The project is located on the South Yuba and Bear Rivers in Nevada County and Placer County, California.

g. *Filed Pursuant to:* Section 12.39 of the Commission's Regulations.

h. *Applicant Contact:* Mr. Richard Doble, Pacific Gas and Electric Company (PG&E), Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon at 202–208–7774, or e-mail address *diana.shannon@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* June 14, 2000.

All documents (original and eight copies) should be filed with Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please reference the following number, P–2310–106, on any comments or motions filed.

k. *Description of Proposal:* Remediation of the existing dam at Blue Lake is necessary to improve the stability of the downstream slope. The work is required under Part 12 of the Commission's regulations. A drawdown of Blue Lake and a deviation from the target minimum flow, required by article 39, is necessary at Blue and Rucker Lakes (downstream of Blue Lake). Flow will be maintained at or above the allowable minimum stipulated in article 39. The work will be performed from July–October 2000. Refill of the lake will begin after completion of the work and may take up to three years due to the lake's small drainage area. The licensee has consulted with the FWS, CDFG, FS, and the Regional Water Quality Control Board regarding the necessary remediation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, 888 First Street, NE, Room 2A, Washington, DC 20426, or call 202–208–1371. The application may be viewed on-line at http:*www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13109 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfers of Licenses and Soliciting Comments, Motions To Intervene, and Protests

May 19, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfers of Licenses.

b. *Project Nos:* 2343–041, 2516–018, and 2517–004.

c. *Date Filed:* May 5, 2000.

d. *Applicants:* Potomac Edison Company, PE Transferring Agent, L.L.C. (to be formed), PE Genco (to be formed), and Allegheny Energy Supply Company, L.L.C.

e. *Names and Locations of Projects:* The Millville Project is on the Shenandoah River in Jefferson County, West Virginia and the Dam No. 4 and Dam No. 95. Hydro Stations are on the Potomac River in Berkeley County, West Virginia. The projects do not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. David C. Benson, Allegheny Energy Supply, RR 12, Box 1000, Roseytown Road, Greensburg, PA 15601, (724) 853–3790, and Mr. John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005, (202) 371–5766.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions:* June 14, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the noted project numbers on any comments or motions filed.

j. *Description of Proposal:* Applicants propose transfers of the licenses for these three projects from Potomac Edison Company to PE Transferring Agency, L.L.C., a soon-to-be-formed wholly-owned subsidiary of Potomac Edison; then to a yet-to-be-formed-and-named affiliate of Potomac Edison, referred to as PE Genco; and finally to Allegheny Energy Supply Company, L.L.C. Transfer is being sought as part of an intra-corporate reorganization of Potomac Edison's parent company, Allegheny Energy, Inc.

The transfer application was filed within five years of the expiration of the licenses for Project Nos. 2516 and 2517. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stat. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "Comments", "Recommendations for Terms and Conditions", "Protest", or "Motion to Intervene" as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13110 Filed 5–24–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

May 19, 2000.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of annual change in the Producer Price Index for Finished Goods, minus one percent.

SUMMARY: The Commission is issuing the index that oil pipelines must apply to their July 1, 1999–June 30, 2000 index ceiling levels to compute their index ceiling levels for the period July 1, 2000 through June 30, 2001, in accordance with 18 CFR 342.3(d). This index, which is the percent change (expressed as a decimal) in the annual average Producer Price Index for Finished Goods from 1998 to 1999, minus one percent, is 0.007598. Oil pipelines must multiply their July 1, 1999–June 30, 2000 index ceiling levels by 1.007598 to compute their index ceiling levels for the period July 1, 2000 through June 30, 2001.

FOR FURTHER INFORMATION CONTACT: David Ulevich, Office of Markets, Tariffs, and Rates, Corporate Applications, Group 2, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0678.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www./ferc./fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information management System (RIMS).

CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994. CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

RIMS contains images of documents submitted to an issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.reference room@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The index system as set forth at 18 CFR 342.3 is based on the annual change in the Producer Price Index for Finished Goods (PPI–FG), minus one percent. The regulations provide that each year the Commission will publish an index reflecting the final change in the PPI–FG, minus one percent, after the final PPI–FG is made available by the Bureau of Labor Statistics in May of each calendar year.

The annual average PPI–FG index figure for 1998 was 130.7 and the annual average PPI–FG index figure for 1999 was 133.0.[1] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 1998 to 1999, minus one percent is 0.007598.[2] Oil pipelines must multiply their July 1, 1999–June 30, 2000 index ceiling levels by 1.007598 [3] to compute their index ceiling levels for the period July 1, 2000, through June 30, 2001, in accordance with 18 CFR 342.3(d).

To obtain July 1, 1999–June 30, 2000 ceiling levels, pipelines must first calculate their ceiling levels for the January 1, 1995–June 30, 1995 index period, by multiplying their December 31, 1994 rates by 1.002175. Pipelines must then multiply those ceiling levels by 0.996415 to obtain the July 1, 1995–June 30, 1996 ceiling levels. Then pipelines must multiply their July 1, 1995–June 30, 1996 ceiling levels by 1.009124 to obtain the July 1, 1996–June 30, 1997 ceiling levels, and multiply the July 1, 1996–June 30, 1997 ceiling levels by 1.016583 to obtain the July 1, 1997–June 30, 1998 ceiling levels. Pipelines then must multiply the July 1, 1997–June 30, 1998 ceiling levels by 0.993808 to obtain the July 1, 1998–June 30, 1999 ceiling levels. Then, pipelines must multiply the July 1, 1998–June 30, 1999 ceiling levels by 0.981654 to obtain the July 1, 1999–June 30, 2000 ceiling levels. Finally, pipelines must multiply the July 1, 1999–June 30, 2000 ceiling levels by 1.007698 to obtain the July 1, 2000–June 30, 2001 ceiling levels. *See Explorer Pipeline Company*, 71 FERC ¶ 61,416 at n.6 (1995) for an explanation of how ceiling levels must be calculated.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 00–13115 Filed 5–24–00; 8:45 am]
BILLING CODE 6717–01–M

[1] The final figure for the annual average PPI–FG is published by the Bureau of Labor Statistics in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the Bureau of Labor Statistics, at (202) 606–7705, and is available in print in August in Table 1 of the annual data supplement to the BLS publication *Producer Price Indexes*. The PPI data are also available via the Internet. The Internet address is *http://www.fedstats.gov*. This site contains data from a number of government agencies; to obtain the BLS data, click on agencies, then click on Bureau of Labor Statistics, then click on data, Most Requested Series, scroll to Producer Price Indexes-Commodities (Finished Goods), for the latest available data.

[2] [133.0–130.7]/130.7=0.017598–.01=0.007598.

[3] 1+(0.007598)=1.007598.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 19, 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,

the deliver a copy of the communication, if written, or 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 in 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 document may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt

1. Project Nos. 2687, 2699, 2019	5–10–00	Frank Winchell.
2. CP00–14–000	5–1–00	Kim Jessen.
3. CP00–14–000	4–18–00	Janet Rowe.
4. CP00–14–000	4–11–00	Sneed Collard.
5. CP00–14–000	4–11–00	Sneed Collard.
6. CP00–36–000	5–1–00	Anne E. Haaker.
7. CP98–143–000	4–20–00	Clyde N. Thompson.
8. Project Nos. 11563, 2019 and 2699	5–10–00	Chuck Whatford.
19. Project No. 2197–038	5–12–00	Steve Kartalia, FERC.
10. Project No. 2055–006	5–15–00	Dianne Rodman, FERC.
11. CP00–14–000	5–2–00	Bill Sendelbach.
12. CP00–14–000	5–8–00	Joe Peterson.
13. CP00–14–000	5–11–00	Joe Peterson.
14. CP00–14–000	5–11–00	Todd Mattson.
15. CP00–14–000	5–11–00	Todd Mattson.
16. CP00–14–000	4–24–00	James J. Slack.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–13104 Filed 5–24–00; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 19, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0715.

Expiration Date: 06/30/2001.

Title: Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information—CC Docket 96–115.

Form No.: N/A.

Respondents: Business or other for profit.

Estimated Annual Burden: 6832 respondents; 90.28 hours per response (avg). 616,817 total annual burden hours (for all collections under this control number).

Estimated Annual Reporting and Recordkeeping Cost Burden: $229,520,000.

Frequency of Response: On occasion; One-time requirement; Recordkeeping; Third party disclosure. *Description:* In the Order on Reconsideration in CC Docket No. 96–115 (released 9/3/99), the Commission reconsidered the previous CPNI Order, addressed petitions for forbearance from the requirements, and established rules to implement section 222. Among other things, carriers are permitted to use CPNI, without customer approval, under certain conditions. (Number of respondents: 4832; hours per response 39 hours; total annual burden: 188,448 hours). Carriers must obtain express customer approval to use CPNI to market service outside the customer's existing service relationship. (Number of respondents: 4832; hours per response: 30 minutes; total annual burden 2416 hours). Carriers must provide a one-time notification of customer's CPNI rights prior to any solicitation for approval. (Number of respondents: 4832; hours per response: 78 hours; total annual burden: 376,896 hours). Pursuant to this one-time notification requirement, these carriers must maintain a record of such notifications for a period of at least one year. (Number of respondents: 4832; hours per response: 30 minutes; total annual burden 2416 hours). Telecommunications carriers must establish a supervisory review process regarding carrier compliance with the rules in Part 64 for outbound marketing situations. (Number of respondents: 4832; hours per response: 15 minutes; total annual burden: 1208 hours). All telecommunications carriers must obtain on an annual basis a certification signed by a current officer attesting that he or she has personal knowledge that the carrier is in compliance with the Commission's rules and to create an accompanying statement explaining how the carriers are implementing the rules and safeguards. (Number of respondents: 4832; hours per response: 1 hour; total annual burden: 4832 hours). LECs must disclose aggregate customer information to others upon request, when they use or disclose the aggregate customer information for marketing service to which the customer does not subscribe. (Number of respondents: 1400; hours per response: 1 hours; total annual burden: 1400 hours). Section 22(c)(2) requires carriers

when presented with a customer's affirmative written request, to provide that customer's CPNI to any person designated in the written authorization. (Number of respondents: 500; hours per response: 5 hours; total annual burden; 2500 hours). Obligation to respond: Mandatory.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–13142 Filed 5–25–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011512–003.

Title: Slot Charter Agreement Between Hyundai Merchant Marine Co., Ltd. and MSC.

Parties:

Hyundai Merchant Marine Co., Ltd.
Mediterranean Shipping Co., S.A.

Synopsis: The proposed agreement modification clarifies and updates the parties' understandings under their currently effective agreement.

Agreement No.: 011709.

Title: CCNI/CTE Space Charter Agreement.

Parties:

Compania Chilena de Navegacion Interoceanica S.A.
Compania Transatlantica Espanola S.A.

Synopsis: The proposed agreement authorizes the parties to charter vessel space to each other in the trade between Puerto Rico and ports in Europe, the Mediterranean, Chile, Peru, Ecuador, Colombia, Panama, and Venezuela. The parties request expedited review.

Agreement No.: 201102.

Title: License Agreement Between SC State Ports Authority and Charleston International.

Parties:

South Carolina State Ports Authority
Charleston International Ports, LLC.

Synopsis: The agreement grants Charleston International a 30-year license to operate a breakbulk marine terminal. The parties have requested expedited handling for this agreement.

By Order of the Federal Maritime Commission.

Dated: May 19, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–13089 Filed 5–24–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 8, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. David C. Reiling, Minneapolis, Minnesota; to acquire voting shares of University Financial Corporation, Saint Paul, Minnesota, and thereby indirectly acquire voting shares of University National Bank, Saint Paul, Minnesota.

Board of Governors of the Federal Reserve System, May 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13129 Filed 5–24–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 19, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. MSB Financial, Inc., Manhattan, Montana; to become a bank holding company by acquiring 100 percent of the voting shares of Manhattan State Bank, Manhattan, Montana.

Board of Governors of the Federal Reserve System, May 19, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–13128 Filed 5–24–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00116]

Cooperative Agreement to Enhance Pediatric and Pregnancy Nutrition Surveillance Systems Data Items; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the (1) Pediatric Nutrition Surveillance System (PedNSS), and (2)Pregnancy Nutrition Surveillance System (PNSS).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Public Health Infrastructure, Nutrition and Overweight; and Maternal, Infant, and Child Health. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to improve the capacity to conduct continuous program-based pediatric and pregnancy nutrition surveillance by adding relevant data items to enhance the ability to monitor the health and nutrition-related problems of women and children. For additional background information see Attachment I.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents that have submitted 1998 or 1999 PedNSS and/or PNSS files which are included in the national PedNSS and/or PNSS reports. Eligible applicants could include the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

C. Availability of Funds

Approximately $250,000 is available in FY 2000 to fund approximately 4 awards. It is expected that the average award will be $60,000, ranging from $45,000 to $65,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of 1 year. Funding estimates may change.

Use of Funds

Funding Preferences

Funding preference will be given to eligible applicants that submit an application to add Core and Supplemental data items to both the PedNSS and PNSS (Record specifications, field explanations, and code definitions for data items are included in Attachment I).

D. Program Requirements

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under *1. Recipient Activities*, and CDC will be responsible for the activities under *2. CDC Activities*.

1. Recipient Activities

a. Expand the PedNSS and/or PNSS to include core and supplemental data items that are routinely collected in public health clinics. Applicants should be willing to include the following core data items in their nutrition surveillance system including: (1) Household Income, (2) Household Size, (3) Date of Height and Weight Measure, (4) Date of Hemoglobin/Hematocrit Measure, and (5) for PedNSS only, Date of Most Recent Breastfeeding Response.

In addition, applicants participating in PedNSS shall be willing to add 3 of the 4 PedNSS supplemental data items including: (1) Zip Code, (2) Introduction to Supplementary Feeding, (3) TV/Video Viewing, and (4) Household smoking.

Applicants participating in PNSS shall be willing to add 4 of the 5 PNSS supplemental data items including: (1) Zip Code, (2) Gestational Diabetes, (3) High Blood Pressure During Pregnancy, (4) Pre-pregnancy Multivitamin Consumption, and (5) Multivitamin Consumption During Pregnancy .

b. Plan and implement procedures for ensuring the completeness and quality of the data, including training and data editing.

c. Propose an evaluation strategy to assess the usefulness of the suggested core and supplemental data items for program planning

d. Prepare and disseminate surveillance information through presentation and publication in appropriate forums.

2. CDC Activities

a. Assist in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information.

b. Provide training and consultation on the rationale, code definitions and methods to collect new core and supplemental data items.

c. Provide technical support for data processing or assist state participants in developing appropriate data-processing capabilities.

d. Assist the recipient in evaluating the usefulness of the suggested core and supplemental data items.

e. Assist the recipient in preparing and presenting Program-relevant surveillance findings to appropriate state and national audiences.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 15 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Table of Contents

2. Plan

a. Define data items to be collected. List the core and supplemental data items that will be included in the revised PedNSS and PNSS transaction files (Record specifications, field explanations, and code definitions for data items are included in Attachment I).

b. Describe the architecture and software of the WIC information system and identify key project staff that will update and test the revised transaction files for PedNSS and PNSS. Include the resume and job descriptions for key project staff in the supporting materials.

c. Define methods to establish data collection for the new core or supplemental data items.

d. Define the process for development and testing of the transaction file(s) to ensure completeness and accuracy of the file(s).

e. Define the process for establishing routine submission of future files.

f. Describe a plan to evaluate the usefulness of the suggested core and supplemental data items.

g. Outline a time schedule for activities listed under c, d, e, and f.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov...Forms, or in the application kit. On or before

July 14, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria (100 points)

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. The extent to which the applicant states that they will collect and submit new core and supplemental PedNSS and PNSS data items. (10 points)

2. The extent to which the applicant describes the procedures planned to develop and test the transaction files, including methods to establish data collection for any new core and supplemental data items not currently collected by the WIC information system. (30 points)

3. Confirmation of applicant's intention to support future routine file submission. The extent to which the applicant details submission procedures. (20 points)

4. Time schedule: Confirmation that project activities are sequential and will be completed in a timely fashion. (20 points)

5. Capability: The extent to which the applicant demonstrates the organizational capacity and ability to develop and conduct proposed program activities, including the architecture and software of the WIC information system and the key project staff having the responsibility and authority to carry out the program activities, as evidenced by job descriptions and resumes.(20 points)

If applicable, whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. Budget (not scored)

The extent to which the budget is reasonable and the budget justification is consistent with the program objectives and purpose.

7. Human Subjects Research (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports (annual);

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. section 241(a) and 42 U.S.C. 247b(k)(2),as amended.

The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This announcement and other CDC program announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Cynthia Collins, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch Announcement 00116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, telephone (770) 488–2757, Email address coc9@cdc.gov.

For program technical assistance, contact: Diane Clark, Deputy Branch Chief, Maternal and Child Nutrition Branch, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, N.E., Atlanta, Georgia 30341–3717, Telephone (770) 488–5702, Email address: ldc2@cdc.gov.

Dated: May 19, 2000.

John L. Williams,

Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).

[FR Doc. 00–13132 Filed 5–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00135]

Public Health Laboratory Sciences Training Program for Hispanic and Native American Students Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for establishing a Public Health Laboratory Sciences Training Program for Hispanic and Native American Students. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Environmental Health, Nutrition and Overweight, Tobacco Use, Substance Abuse, Diabetes, Heart Disease and Stroke, Cancer, Maternal, Infant and Child Health, and Education and Community-Based Programs. For the conference copy of "Healthy People 2010", visit the internet site: http://www.health.gov/healthypeople.

The purpose of the program is to introduce Hispanic and Native American students to opportunities in public health and laboratory science through education and training, to include students from undergraduate, graduate, and post-doctoral levels.

B. Eligible Applicants

Applications may be submitted by public and private universities or colleges from the United States and its territories, offering undergraduate and postgraduate academic programs in the physical and/or biomedical sciences, and leading to degrees at the bachelors, masters, and doctorate levels.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $150,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Funds may be used for activities which support the goals and objectives of the fellowship program including travel expenses for program faculty and students for orientation and training, and to attend certain professional meetings for recruitment. Funds may be used for reporting results of fellowship research and the preparation and distribution of material to promote and announce the availability of this fellowship program. Funds may also be used to offset a portion of salaries of the recipient institution's faculty, staff, and graduate teaching assistants who spend time in support of the technical and administrative aspects of this program. Funds may be provided for student stipends, with payment scales determined by the recipient, based on the prior training, education and experience of the Fellow.

Funds may not be used for the direct support of faculty research projects except for those aspects of such projects which directly benefit the specific training objectives of Fellows.

D. Programmatic Interest

The mission of the funding agency includes the application of analytical laboratory procedures to measure substances in biological samples from humans. The purpose of these analyses is to assess human exposure to toxic substances, health effects from the exposure, risk factors for diseases, and effectiveness of public health interventions. In achieving this mission, the laboratory techniques and areas of scientific investigation include:

1. Sample preparation techniques
2. Liquid or gas chromatography
3. Radio-immunoassay (RIA), enzyme linked immunoassay (EIA), or other immuno-assay techniques
4. Polymerase chain reaction (PCR) and other molecular biology techniques
5. Atomic absorption and atomic emission techniques
6. Mass spectroscopic techniques
7. Wet chemistry and UV-Visible and Infared spectroscopic techniques
8. Analytical method development and evaluation procedures
9. Routine analytical procedures and quality control
10. Environmental chemistry, environmental health, and toxicology
11. Nutritional Biochemistry, Diabetes, Cancer, Smoking and health
12. Introduction to epidemiology from a laboratory perspective
13. Other laboratory techniques and scientific disciplines as appropriate and necessary

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities under 2. CDC Activities.

1. Recipient Activities

a. Establish and manage a comprehensive program to recruit, select, compensate, mentor, and guide Native American and Hispanic students in the sciences for participation in a public health laboratory sciences training program. (The target number of students for this project is up to 6 per year. Typical fellowships at the undergraduate level will be for a maximum of 4 months. At the post-baccalaureate level (including the post-Masters and the post-Doctorate levels) typical fellowships will be for one year, renewable annually for a maximum of three years. Appointments of less than one year may be made under special circumstances).

b. Provide a senior staff or faculty member to serve as fellowship director, who will be responsible for establishing and/or maintaining close working relationships with students.

c. Identify students with interest and aptitude in specific scientific disciplines such as: chemistry and all sub-specialties of chemistry (clinical, analytical, and organic, etc.), biochemistry and all related sub-specialties (toxicology, neurotoxicology, biosensors, etc.), molecular biology, genetics, biostatistics, and data acquisition and instrument control systems design.

d. Develop new, or modify existing, undergraduate and graduate level curricula in relevant academic departments of the recipient institution to complement this fellowship program.

e. Establish working relationships with community colleges and secondary schools that serve significant populations of Native American and Hispanic students.

f. Develop curricula that provide training in Environmental Chemistry and Environmental Health.

g. Provide guidance to the project mentors on the unique cultural or educational needs of potential Fellows since these needs may have an impact on the success and retention of the students in this program.

h. Provide preliminary training to potential Fellows in chemical and biological laboratory safety, including universal precautions for working with biological samples, use of protective equipment, work-site performance expectations, presentation skills, basic principles of laboratory quality control, and other training which helps build student confidence for encountering the differences between academic settings and the high-throughput laboratory setting they will encounter during the CDC-based portion of their fellowship and in future employment in the sciences.

2. CDC Activities

a. Provide assistance, if needed, in the development of relevant curricula.

b. Provide practical and relevant laboratory training, and work experience opportunities at the CDC Environmental Health Laboratory facilities in Atlanta, Georgia.

c. Provide training oversight, coordination, and guidance for the Fellows and their selected research projects. (Refer to Programmatic Interest section of this announcement.)

F. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The applicant should include as part of the narrative or as a two to five page report at the beginning addressing the following information:

1. Serve local populations of at least 100,000 Native Americans and/or Hispanics.

2. Annually enroll a total of at least 10,000 graduate and undergraduate students, with total enrollment by

Hispanic, and Native Americans constituting at least 40% of the total undergraduate student body.

3. Have a demonstrated record of success in recruiting and retaining minority undergraduate science students through completion of their bachelors degree and continuation of post graduate training. (Please provide recent historical data on matriculation, retention, graduation, and post-graduate placement of minority students where available).

4. Evidence of past successful activities which illustrate creativity and originality in establishing relationships with local community colleges serving Native American and Hispanic populations.

5. An academic program and supporting faculty recognized in analytical, biomedical, and/or environmental chemistry.

6. Provide plans for recruitment and outreach for Fellows to include the process of establishing partnerships with community(ies) and recognition of mutual benefits beyond those already demonstrated.

7. Present estimates of the level of participation in the program in the first year and projections for future years.

Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than twenty double-spaced pages printed on one side, with one inch margins, and unreduced font plus pre-printed attachments. The application must be submitted unstapled and unbound.

G. Submission and Deadline

Submit the original and two copies of PHS–5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before July 21, 2000, submit the application to the Grants Management Specialist identified in **Where to Obtain Additional Information** section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding of the Objectives of the Project (20 percent)

The extent to which the applicant demonstrates an understanding of the nature of the problem to be addressed. This specifically includes description of the unique training needs of Native American and Hispanic science students at the undergraduate and graduate levels and cultural barriers which may discourage them from pursuing academic programs in the sciences, and cultural or other factors which may affect the retention of Fellows in the program. Applicant should provide estimates (and sources of estimates) of the demographics of Native American and Hispanic enrollment in scientific higher education in the geographic areas served by the applicant and factors which may affect the validity of such estimates.

2. Technical Approach (25 percent)

The extent to which the applicant describes in detail the academic institution's component of the proposed Fellowship program including, but not limited to a description of:

a. An overview of the goals and objectives of the fellowship program.

b. A comprehensive program to recruit, select, compensate, mentor, and guide Native American and Hispanic students in the sciences for participation in a public health laboratory sciences training program.

c. Activities to establish close working relationships with students.

d. The institution's undergraduate and graduate level curricula in relevant academic departments that may be reasonably expected to integrate with the purpose of this fellowship program.

3. Ability To Carry Out the Project (25 percent)

The extent to which the applicant provides evidence of ability to carry out the proposed project and the extent to which the applicant demonstrates capability to achieve the objectives of the proposed program. This may include plans, time-lines, approaches, methods for conducting such a fellowship program, and may include collaborating with other universities or other health research agencies.

4. Personnel (15 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

5. Collaboration (5 percent)

The extent to which the applicant demonstrates the ability to collaborate and/or form partnerships with community colleges and secondary schools serving significant populations of Hispanic and Native American students.

6. Plans for Administration (10 percent)

The extent to which the applicant describes the plans for administering the project.

7. Budget (Not Scored)

The extent to which the applicant provides a detailed budget justification which is reasonable and consistent with the objectives of this program.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. semi-annual progress reports, no more than 30 days after the end of the report period.

2. financial status report, no more than 90 days after the end of the budget period; and

3. final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–16 Security Clearance Requirement

Additional information can be attained as follows:

Executive Order 13021—Tribal Colleges—http://www.aipc.osmre.gov/EO13021.htm
Executive Order 12900—Excellence in Education for Hispanic Americans—http://www.ioc.army.mil/others/minority/ex12900.HTML

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a) and 317 [42 U.S.C. 241(a) and

247(b) as amended]. The Catalog of Federal Domestic Assistance number is 93.283.

K. Where To Obtain Additional Information

This and other CDC Announcements can be found on the CDC homepage Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements". To receive additional written information and to request an application kit, call 1–888–Grants4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC),Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2718, Email address: mij3@cdc.gov.

For program technical assistance, contact: Dayton T. Miller, Ph.D., National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE (F–18), Atlanta, Georgia 30341–3724, Telephone: (770) 488–4452, Email address: dtm1@cdc.gov.

Dated: May 19, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–13131 Filed 5–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Addendum #3 to the Assessment Plan: Lower Fox River/Green Bay Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30-day comment period.

SUMMARY: Notice is given that the document entitled: "Third Assessment Plan Addendum: Lower Fox River/ Green Bay NRDA" ("The Addendum") will be available for public review and comment on the date of publication in the **Federal Register**.

The U.S. Department of the Interior ("Department"), the U.S. National Oceanic and Atmospheric Administration, the Menominee Indian Tribe of Wisconsin, the Oneida Tribe of Indians of Wisconsin, and the Wisconsin Department of Natural Resources have asserted trusteeship for natural resources considered in this assessment, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR 300.600, 300.605, and 300.610, and Executive Order 12580, 52 F.R. 2923 (Jan. 23, 1987).

The assessment, including the activities addressed in this addendum, will be conducted in accordance with the Natural Resource Damage Assessment Regulations found at 43 CFR part 11, to the extent applicable. The public review of the Addendum announced by this Notice is provided for in 43 CFR 11.32(C).

Interested members of the public are invited to review and comment on the Addendum. Copies of the Addendum, and the "Assessment Plan: Lower Fox River/Green Bay NRDA" ("The Plan") issued on August 23, 1996 (FR Doc. 96–21520), can be requested from the address listed below, or downloaded from the following web site: http://www.fws.gov/r3pao/nrda. All written comments will be considered and included in the Report of Assessment, at the conclusion of the assessment process.

DATES: Written comments on the Addendum must be submitted on or before June 26,2000.

ADDRESSES: Requests for copies of the Addendum and/or the Plan may be made to: David Allen, U.S. Fish and Wildlife Service, 1015 Challenger Court, Green Bay, Wisconsin 54311.

SUPPLEMENTARY INFORMATION: The purpose of this natural resource damage assessment is to confirm and quantify the suspected injuries to natural resources in the Lower Fox River, Green Bay, and Lake Michigan environment resulting from exposure to hazardous substances released by area paper mills and other potential sources. It is suspected that this exposure has caused injury to trustee resources. The injury and resultant damages will be assessed under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, and the Clean Water Act, as amended.

The objective of this Addendum is to initiate a process through which the governmental partners will attempt to arrive at a single coordinated Restoration and Compensation Determination Plan that integrates the ongoing state and federal/tribal natural resource damage assessments and to notify the public regarding this process.

William F. Hartwig,

Regional Director, Region 3, Fish and Wildlife Service.

[FR Doc. 00–13133 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15630 et al.]

Legal Description of Modification and Partial Revocation of Executive Orders; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice corrects the total acreage figures of Public Land Order 7437 published in 65 FR 58, of March 24, 1000, on page 15917. The Summary of the Public Land Order should read: "This order modifies 5 Executive orders to established a 20-year term as to 8,040.07 acres of lands withdrawn for the Bureau of Land Management for use as Powersite Reserves. This order also partially revokes 3 of the Executive orders insofar as they affect 2,362.82 acres and opens 401.95 acres to surface entry. The remaining 1,960.87 acres have been conveyed out of Federal ownership. All of the lands in Federal ownership have been and will remain open to mining and mineral leasing." Paragraph 2 lists 277.30 acres, that figure is corrected to 401.95 acres. Paragraph 3 lists 3,165.70 acres , that figure is corrected to 1,960.87 acres.

EFFECTIVE DATE: May 25, 2000.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 00–13163 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–1150–PG]

Dakotas Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting; Dakotas Advisory Council Meetings.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held July 10 & 11, 2000, at the Travel Lodge, Dickinson, North Dakota. The session will convene at 8 a.m. on July 10th and resume at 8 a.m. on the 11th. Agenda items will include OHV followup, South Dakota Land Exchange, grazing permit renewal update, Schnell signing, Endangered Species (sage grouse and prairie dogs), Grasslands Stewardship Initiative, Field Trip to Schnell Recreation Area.

The meeting is open to the public and a public comment period is set for 8 a.m. on July 11th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Ave. W., Dickinson, North Dakota. Telephone (701) 225–9148.

Dated: May 10, 2000.

Douglas J. Burger,

Field Office Manager.

[FR Doc. 00–13122 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–00–0777–XX]

Sierra Front/Northwestern Great Basin Resource Advisory Council; Notice of Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting location and time for the Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), a meeting of the U.S. Department of the Interior, Bureau of Land Management (BLM) Sierra Front/Northwestern Great Basin Resource Advisory Council (Nevada) will be held as indicated below. The topic of discussion will be a review of the Black Rock Management Plan being prepared by the Winnemucca Field Office, and other topics the council may raise.

The meetings is open to the public. The public may present written and/or comments to the council. The public comment period for the council meeting will be at 4:00 p.m. on Wednesday, June 14th. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations, or who desire a hard copy of the agenda, should contact Mike Holbert, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445, telephone (775) 623–1514 no later than June 10, 2000.

DATES: The council will meet on Wednesday, June 14, 2000, from 9:00 a.m. to 5:00 p.m. at the Best Western Inn-Fernley, 1405 East Newlands Drive, Fernley, Nevada. Public comment on individual topics will be received at the discretion of the Council Chairperson, as meeting moderator, with a general public comment period on Wednesday, June 14, 2000, at 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mike Holbert, Associate Field Manager, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, NV 89445. Telephone (775) 623–1514.

Dated: May 12, 2000.

Michael R. Holbert,

Associate Field Manager, Winnemucca Field Office.

[FR Doc. 00–13165 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

[CA–330–1220–AB]

King Range National Conservation Area, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed establishment of supplementary rules.

SUMMARY: The Arcata Field Office is proposing the establishment of the following Supplementary Rules for the King Range National Conservation Area as provided for under title 43 Code of Federal Regulations subpart 8365.1–6. The implementation of fees is authorized under the Land and Water Conservation Fund Act of 1965 as Amended, and the Omnibus Consolidated Rescissions Act of 1996 as Amended (Pub. L. 104–134).

A. Camping Closure

BLM administered lands within the following areas are closed to camping (overnight occupancy) outside of developed campsites: Public lands within 500 feet of the perimeter of the Mattole Campground.

B. Overnight Trail Head Parking Fees

An overnight trailhead parking fee will be implemented at the Mattole and Black Sands Beach Recreation Sites to meet the goals described in the supplementary information below. The fee will be set at $2 per night (any future fee changes would be published locally prior to implementation) and will be in effect from ½ hour after sunset to ½ hour before sunrise. There will be no fees for day use.

C. Overnight Camping Fees

Campground use fees of $5.00 per night are established for the Mattole and Honeydew Creek Campgrounds (any future fee changes would be published locally prior to implementation). Campsite occupancy is limited to two vehicles and 8 persons per site. Fees are in effect from ½ hour after sunset to ½ hour before sunrise at the Mattole Campground, and from ½ hour after sunset until 8:00 a. m. at the Honeydew Creek Campground.

D. Black Sands Beach, Nighttime Use

This site is closed to all overnight camping. Nighttime occupancy is limited to vehicle parking for off-site backcountry use. For the purposes of this rule, off-site means traveling north of Telegraph Creek for camping/backpacking or other overnight uses. Use of the site itself is limited to 30 minutes for unloading/loading purposes during the nighttime restriction period. The nighttime restriction is in place from ½ hour after sunset to ½ hour before sunrise. This rule does not affect day-time use.

EFFECTIVE DATE: These Supplementary Rules will be effective on July 1, 2000.

Comment Period

The BLM is requesting comments concerning these supplemental rules. The comment period will be open for 30 days from the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Lynda Roush, Bureau of Land Management, Arcata Field Office, 1695 Heindon Rd., Arcata, CA 95521. Phone (707) 825–2300.

SUPPLEMENTARY INFORMATION: The above supplementary rules are being proposed for the following purposes:

A. Camping Closure

The closure is intended to reduce resource damage and fire danger in the riparian area and beach dunes

surrounding the Mattole Campground. It will also allow for enforcement of the site capacity limits at the Mattole Campground by requiring that visitors hike into the backcountry or travel to other available campgrounds when this site is full. Currently, visitors are impacting undeveloped areas immediately adjacent to the campground so they can camp nearby and use the facilities.

B. Overnight Parking Fees

The overnight parking fees will be implemented as a management tool for encouraging distribution of overnight use away from the crowded Black Sands Beach and Mattole trailheads, and to discourage large nighttime group gatherings at these trailheads. Neither facility is designed to accommodate large nighttime group events, and this use is not compatible with the goals of the King Range Management Program (1974) and King Range Visitor Services Plan (1992). All parking fees will be used within the King Range to cover maintenance costs of the sites and recreation opportunities that they support. Mattole Campground users will not have to pay the parking fee for vehicles (up to two) parked at their campsite.

C. Camping Fees

Camping fees are established at Honeydew Creek and Mattole Campgrounds to cover a portion of the maintenance costs; to be commensurate with fees charged at other public and private camping areas in the region; and for use as a management tool to discourage nighttime group gatherings in the campgrounds. These nighttime group events are not compatible with the purpose of the site development and management as an overnight camping facility, nor with the goals of the King Range Management Program (1974) and King Range Visitor Services Plan (1992).

D. Black Sands Beach Nighttime Use

The Black Sands Beach Recreation Site is designed to be a backcountry trailhead parking area and day use facility. This rule is intended to limit nighttime use of the trailhead facilities to a parking area for backcountry use only. The parking facilities are located immediately adjacent to a residential area, and nighttime use of the area as a destination would cause unreasonable noise within the neighborhood. This restriction would not affect overnight backcountry users who park at the site, and will also not affect day use.

Violation of any of the above rules is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months (43 CFR 8360.0–7).

Daniel E. Averill,

Acting Arcata Field Manager.

[FR Doc. 00–13134 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0220; OR–55753]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, proposes to withdraw approximately 960 acres of National Forest System lands, lying within the Siskiyou National Forest, to protect the recreation, fisheries, scenic, and water quality values of the Scenic section of the North Fork Smith Wild and Scenic River. This notice closes the lands for up to 2 years from surface entry and mining. The public lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: Comments and requests for a public meeting must be received by August 24, 2000.

ADDRESSES: Comments and meetings requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, 503–952–6189.

SUPPLEMENTARY INFORMATION: On May 19, 2000, the Forest Service filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Siskiyou National Forest

All lands lying on the right (west) bank of the river corridor, including the river bed, and extending ¼ mile from the centerline of the North Fork Smith River, from Horse Creek downstream 4.5 miles to the confluence of Baldface Creek, as described in the following:

T. 40 S., R. 11 W., unsurveyed
Sec. 15, SW¼SW¼;
Sec. 16, E½;
Sec. 21, E½E½ and NW¼SE¼;
Sec. 22, W½W½ and SE¼SW¼;
Sec. 27, W½E½, E½W½ and NW¼NW¼;
Sec. 28, NE¼NE¼;
Sec. 34, W½E½ and E½W½.
T. 41 S., R. 11 W.,
Sec. 2, W½;
Sec. 3, NE¼;
Sec. 11, N½NW¼.

AND all lands lying on the left (east) bank of the river corridor, including the river bed, and extending ¼ mile from the centerline of the North Fork Smith River as described in the following:

T. 41 S., R. 11 W.,
Sec. 2, those portions of the E½SW¼ and W½SE¼, lying outside the boundaries of the Kalmiopsis Wilderness Area;
Sec. 11, those portions of the NW¼NE¼ and NE¼NW¼, lying outside the boundaries of the Wild segment of the North Fork Smith Wild and Scenic River.

The areas described aggregate approximately 960 acres in Curry County.

The purpose of the proposed withdrawal is to protect the outstanding recreation, fisheries, scenic, and water quality values for which the North Fork Smith River was designated Wild and Scenic.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary land uses which may be permitted during this segregative period include licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Dated: May 19, 2000.
Robert D. Devi:ney, Jr.,
Chief, Branch of Realty and Records Services.
[FR Doc. 00–13170 Filed 5–24–00; 8:45 am]
BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0091).

SUMMARY: To comply with the requirements of the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on an information collection request (ICR), titled "30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line." We are preparing an ICR, which we will submit to the Office of Management and Budget (OMB) for review and approval.

DATES: Submit written comments by July 24, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. 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 may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1010–0091.

Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

We use the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- determine effectiveness of the spill-response capability of owners/operators;
- review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill response plans and to witness spill-response exercises;
- assess the sufficiency and availability of contractor equipment and materials;
- verify that sufficient quantities of equipment are available and in working order;
- oversee spill-response efforts and maintain official records of pollution events; and
- assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

Responses are mandatory. No proprietary, confidential, or sensitive information is collected.

Frequency: The frequency varies by regulatory requirement, but is mostly annual or on occasion.

Estimated Number and Description of Respondents: Approximately 193 owners or operators of facilities located in both State and Federal waters seaward of the coast line.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: The currently approved burden for this information collection is 47,439 hours. The major components of this burden are for:

- Spill response plans for OCS or State water facilities (100 hours).
- Revised spill response plans (16.5 hours).
- Modified OCS spill response plan for facilities in State waters (45 hours).
- Response plan for facilities in State waters using State requirements (93 hours).
- Conduct of annual training; retain records for 2 years (40 hours).
- Conduct of triennial response plan exercise; retain records for 3 years (110 hours).

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no non-hour cost burdens for this collection.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *"

Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified any non-hour cost burdens and need to know if you have other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not

associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Dated: May 17, 2000.

John V. Mirabella,

Acting Chief, Engineering and Operations Division.

[FR Doc. 00–13166 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–MR–W

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Its Structural Fire Management Program

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) has prepared a Director's Order setting forth its policies and procedures governing structural fire prevention, protection, and suppression. When adopted, the policies and procedures will apply to all units of the national park system, and will supersede and replace the policies and procedures issued in June 1987.

DATES: Written comments will be accepted until June 26, 2000.

ADDRESSES: Draft Director's Order #58 is available on the Internet at http://www.nps.gov/refdesk/DOrders/index.htm. Requests for copies and written comments should be sent to Bill Oswald, NPS Structural Fire Program Manager, Fire Management Program Center, 3833 S. Development Avenue, Boise, Idaho 83705, or to his Internet address: *bill_oswald@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The policies and procedures governing structural fire management have previously been published in the form of guideline NPS–58. That guideline will be superseded by the new Director's Order 58 (and a reference manual that will be issued subsequent to the Director's Order). The draft Director's Order covers topics such as fire management planning, safety and health, cultural resources, concessions, reporting, investigation, training, coordination, program review, preparedness, and funding. Director's Order #58 addresses only structural fire management; wildland fire management is addressed in Director's Order #18, approved November 17, 1998 (and is also available on the Internet site listed above).

Dated: May 19, 2000.

Loran Fraser,

Chief, Office of Policy.

[FR Doc. 00–13143 Filed 5–24–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 18, 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), on or before June 26, 2000.

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: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Claims Report.

OMB Number: 1205–0028.

Affected Public: State, Local, or Tribal Government.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden
ETA 538	53	Weekly	2,756	30 min	1,378 hours.
ETA 539	53	Weekly	2,756	50 min	2,297 hours.
Totals	53		5,512	40 min	3,675 hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Data for the determination of the beginning, continuance, or termination of an Extended Benefit (EB) period in any State by reason of the EB trigger rate and the data on initial and continued claims used as economic indicators.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–13155 Filed 5–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary Submission for OMB Review; Comment Request

May 15, 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. The 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 ((201) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before June 26, 2000.

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: Employment Standards Administration (ESA).

Title: Wage Statement.

Type of Review: Extension.

OMB Number: 1215–0148.

Frequency: On occassion.

Affected Public: Farms, business or other for-profit, Individuals or households.

Number of Respondents: 1.4 million.

Number of Annual Responses: 34 million.

Estimated Time Per Response: 1 minute.

Total Burden Hours: 566,667.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Migrant and Seasonal Agricultural Protection Act require employers of agricultural workers to maintain records of certain payroll information given to each worker.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–13156 Filed 5–24–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA)(Section 167) National Farmworker Jobs Program (NFJP)

Allocations

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice: Announcement of Formula Allocations for the Program Year (PY) 2000 NFJP.

SUMMARY: Pursuant to Section 182(d) of the WIA, the ETA is publishing the PY 2000 allocations for the NFJP authorized under Section 167 of the WIA.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Fernandez-Mott, Chief, Division of Seasonal Farmworker Programs. Her e-mail address is <afernandez-mott@doleta.gov>. Her telephone number is (202) 219–5500, ext. 121. (This is not a toll-free number.)

EFFECTIVE DATE: May 25, 2000. Comments must be submitted on or before June 26, 2000.

SUPPLEMENTARY INFORMATION: On May 19, 1999, a Notice of the new formula for allocating funds available for the NFJP (formerly referred to as the Migrant and Seasonal Farmworker (MSFW) program) was published in the **Federal Register** at 64 FR 27390 (May 19, 1999). The Notice explains how the new formula achieves its purpose, which is to distribute funds geographically by State service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The new formula consists of a rational organization of multiple data sets selected to yield the relative share distribution of eligible farmworkers. The result is substantially more relevant to the purpose than the allotments determined by the prior formula. Because it is the best available allocation tool and to maintain consistency, the Department of Labor is using the new formula described in the May 19 Notice to allocate PY 2000 WIA section 167 funds. The rationale for the new allocation formula and underlying methodology on how the new formula realigns the NFJP allocations, is fully explained in the May 19 Notice. The Department of Labor invites comments on our decision to use this formula for allocating PY 2000 funds.

Implementing the new formula in PY 1999 gave rise to significant changes in relative funding levels. The magnitude of the realignment for some State service areas is substantial. This is attributable to the inherent weaknesses of the data sources used under the prior formula and also to the fact the sources had gradually become substantially date-stale. To provide for a smooth transition from the original distributions, to the distributions provided by the new formula, Part IV of the May 19, 1999 Notice provides a strategy for implementation of the new formula through four incremental "hold harmless" stages. The stages adjust the formula allocations by limiting the rate of reduction in relative funding levels to the four annual increments of 95 percent, 90 percent, 85 percent and 80 percent of the 1998 level—the last year under the old formula. Full implementation of the new (combined-data) formula is reached on the 5th year allocation. The May 19, 1999 Notice provides that for PY 2000, which is the second stage hold-harmless year, each State service area will receive no less than 90 percent of its PY 1998 allocation (64 FR 27390, 27399 § IV(2)). PY 2000 is the operating year that begins on July 1, 2000.

The Fiscal Year 2000 pre-recission appropriation for the MSFW programs

under WIA Section 167 is $74,445,000. A portion of this amount is an addition to the Administration's budget request. This budget addition amount is designated in the Committee appropriation language for addressing two objectives. One objective applies to the state-by-state formula allocation of funds for the NFJP. The budget addition offsets the scheduled adjustment to those State service areas undergoing a reduction in funding, by financing the difference between their PY 1998 level and the PY 2000 hold-harmless adjusted level. The other is to provide additional funding to raise the discretionary support for the farmworker housing assistance grants from the 1998 level to a level of $3,000,000. The total budget addition amount is $ 3,428,000. The recission action on the appropriation for the WIA Section 167 is $250,000. All of the $250,000 recission amount is applied to reduce the budget addition. The final budget addition, after reduction for the recission amount, is $3,178,000.

In PY 2000, the base amount allocated under the formula is equal to the PY 1999 formula allocation amount of $67,596,408. The budget addition amount is applied to those state service areas that are allocated a declining relative share of funding under the second hold-harmless stage of the new formula. Had there been no recission action, the total cost of this offset would be $2,927,691. Application of the 7.293 percent budget recission, reduces the budget addition by $213,517 to the post-recission level of $2,714,174. The total amount allocated to the States for the NFJP is the base amount, plus the budget addition amount, less the applied recission amount, leaving a net total of $70,310,582. The effects of these steps for each State service area are shown in the last three columns of the "Allocation Table."

Under 20 CFR 669.240(a), at least 94 percent of the funds appropriated must be allocated to the State service areas for the NFJP grants. The total amount ($70,310,582) allocated for PY 2000 is 94.446 percent, thus exceeding the minimum requirement. The remaining amount of the appropriation is available for the other WIA Section 167 activities for farmworkers, which include the post recission amount of $2,963,543 for the PY 2000 farmworker housing assistance grants.

Minimum Funding Provisions

Part V of the **Federal Register** Notice (See 64 FR 27390, 27400 § V (May 19, 1999) provides that a State service area allocated less than $60,000 could be combined with an adjoining State service area. For PY 2000, the Rhode Island area allocation of $2,875 will be combined with the Connecticut area allocation. The incumbent grantee will not be required to amend its PY 2000 operating plan due to this action.

PY 2000 Allocations

The final (far right-hand) column of the "Allocation Table" provides the allotments for the NFJP in PY 2000. Grantees will use these figures in preparing the PY 2000 NFJP grant plans.

Signed at Washington, DC, this 18th day of May, 2000.

Shirley M. Smith,

Administrator,, Office of Adult Services.

ALLOCATION TABLE FOR PROGRAM YEAR 2000 NATIONAL FARMWORKER JOBS PROGRAM

State	PY 1998 allotments	Formula allocation w/o hold harmless adjustment	Formula percentage share w/o hold harmless (in percent)	PY 2000 allocation with hold harmless adjustment	Cost to bring states to PY 1998 levels	Recission action (7.293)	PY 2000 allotments
Alabama	$791,835	$437,632	0.67766	$712,652	$79,183	$5,775	$786,060
Arizona	1,519,645	1,719,287	2.66226	1,646,953	.....	0	1,646,953
Arkansas	1,167,409	724,893	1.12247	1,050,668	116,741	8,514	1,158,895
California	14,591,138	20,067,526	31.07392	16,077,073	.....	0	16,077,073
Colorado	805,523	992,449	1.53678	879,010	.....	0	879,010
Connecticut	206,024	303,689	0.47025	228,511	.....	0	228,511
Delaware	118,334	125,899	0.19495	125,899	.....	0	125,899
Florida	4,631,415	2,465,700	3.81806	4,168,274	463,141	33,777	4,597,638
Georgia	1,711,615	876,499	1.35723	1,540,454	171,161	12,483	1,699,132
Idaho	877,438	1,079,184	1.67108	957,349	.....	0	957,349
Illinois	1,425,808	1,424,912	2.20643	1,424,912	896	65	1,425,743
Indiana	781,615	927,202	1.43574	850,271	.....	0	850,271
Iowa	1,314,394	1,078,955	1.67073	1,182,955	131,439	9,586	1,304,808
Kansas	697,839	1,078,783	1.67046	777,719	.....	0	777,719
Kentucky	1,352,613	1,043,179	1.61533	1,217,352	135,261	9,865	1,342,748
Louisiana	796,032	484,907	0.75086	716,429	79,603	5,805	790,227
Maine	327,397	174,702	0.27052	294,657	32,740	2,388	325,009
Maryland	306,291	363,789	0.56332	333,229	.....	0	333,229
Massachusetts	351,027	298,012	0.46146	315,924	35,103	2,560	348,467
Michigan	878,641	944,430	1.46242	944,430	.....	0	944,430
Minnesota	1,274,775	879,095	1.36125	1,147,298	127,477	9,297	1,265,478
Mississippi	1,449,044	571,321	0.88467	1,304,140	144,904	10,568	1,438,476
Missouri	1,094,524	976,379	1.51189	985,072	109,452	7,982	1,086,542
Montana	667,189	461,861	0.71518	600,470	66,719	4,866	662,323
Nebraska	774,884	1,092,397	1.69154	855,772	.....	0	855,772
Nevada	200,795	159,091	0.24635	180,716	20,079	1,464	199,331
New Hampshire	112,600	100,958	0.15633	101,340	11,260	821	111,779
New Jersey	400,038	698,545	1.08168	451,763	.....	0	451,763
New Mexico	598,720	934,978	1.44778	667,952	.....	0	667,952
New York	1,850,667	1,088,774	1.68593	1,665,600	185,067	13,497	1,837,170
North Carolina	3,006,003	1,897,104	2.93760	2,705,403	300,600	21,923	2,984,080
North Dakota	468,362	609,496	0.94379	513,493	.....	0	513,493
Ohio	904,951	1,264,492	1.95803	998,582	.....	0	998,582

ALLOCATION TABLE FOR PROGRAM YEAR 2000 NATIONAL FARMWORKER JOBS PROGRAM—Continued

State	PY 1998 allotments	Formula allocation w/o hold harmless adjustment	Formula percentage share w/o hold harmless (in percent)	PY 2000 allocation with hold harmless adjustment	Cost to bring states to PY 1998 levels	Recission action (7.293)	PY 2000 allotments
Oklahoma	608,145	1,276,891	1.97723	702,695	.....	0	702,695
Oregon	1,087,697	1,452,311	2.24886	1,195,236	.....	0	1,195,236
Pennsylvania	1,221,441	1,549,985	2.40010	1,336,212	.....	0	1,336,212
Rhode Island	0	38,832	0.06013	2,875	.....	0	2,875
South Carolina	1,080,106	391,046	0.60552	972,095	108,011	7,877	1,072,229
South Dakota	692,869	456,831	0.70739	623,582	69,287	5,053	687,816
Tennessee	957,799	720,217	1.11523	862,019	95,780	6,985	950,814
Texas	5,979,800	6,697,752	10.37126	6,475,747	.....	0	6,475,747
Utah	245,354	288,106	0.44612	266,687	.....	0	266,687
Vermont	213,134	105,217	0.16293	191,821	21,313	1,554	211,580
Virginia	1,036,441	708,789	1.09754	932,797	103,644	7,559	1,028,882
Washington	1,705,576	2,262,216	3.50297	1,873,085	.....	0	1,873,085
West Virginia	219,325	100,275	0.15527	197,393	21,932	1,600	217,725
Wisconsin	1,229,201	953,157	1.47593	1,106,281	122,920	8,965	1,220,236
Wyoming	201,911	232,207	0.35956	219,105	.....	0	219,105
Total Center United States	63,933,384	64,579,952	100.00	64,579,952	2,753,713	200,828	67,132,836
Conterminous United States	63,933,384	64,579,952	95.53755				
Hawaii	251,607	204,254	4.16028	204,254	47,353	3,453	248,154
Puerto Rico	2,938,827	2,812,202	.30217	2,812,202	126,625	9,235	2,929,592
Subtot. (HI+PR)	3,190,434	3,016,456	4.46	3,016,456	173,978	12,688	3,177,746
Total United States	67,123,818	67,596,408	100.00	67,596,408	2,927,691	213,517	70,310,582

[FR Doc. 00–13154 Filed 5–24–00; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Work Incentive Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; Solicitation for Grant Applications (SGA).

This notice contains all of the necessary information and forms needed to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the availability of $20 million to award competitive grants designed to enhance the employability, employment and career advancement of people with disabilities through enhanced service delivery in the new One-Stop delivery system established under the Workforce Investment Act of 1998. The Work Incentive Grant program will provide grant funds to consortia and/or partnerships of public and private non-profit entities working in coordination with a state and/or local One-Stop delivery system to augment the existing programs and services and ensure programmatic access and streamlined, seamless service delivery for people with disabilities.

DATES: Applications will be accepted commencing on the date of publication. The closing date for receipt of applications under this announcement is Tuesday, August 1, 2000, at 4:00 p.m. Eastern Standard Time (EST) at the address below. Telefacsimile (fax), telegraphed, or electronic applications will not be honored.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. B. Jai Johnson, SGA/DFA 00–107, 200 Constitution Avenue, NW Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Ms. B.Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll-free number. All inquiries should include the SGA number (DFA 00–107) and a contact name, fax and phone numbers. This solicitation is also being published on the Internet on the ETA's disability On-line Home Page at wdsc.org/disability, or the ETA homepage at doleta.gov. Award notifications will also be published on the ETA homepage.

SUPPLEMENTARY INFORMATION:

I. Authority

Provisions relating to the One-Stop delivery system are at Section 121, 134(c) of the Workforce Investment Act (29 USC 2841, 2864); Wagner-Peyser Act 53(c)(1) (29 USC 496(c)(1)) and Department of Labor Appropriations Act 2000 (Pub. L. 106–113). Regulations governing the Workforce Investment Act are at 20 CFR parts 660–671. An Interim Final Rule was published in the **Federal Register** at 64 FR 18662 (Apr. 19,1999) with issuance of final rule planned for the summer of 2000.

II. Background

The Workforce Investment Act of 1998 establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner Peyser Act, Adult Education and Literacy Act, the Rehabilitation Act and supersedes the Job Training Partnership Act. A number of other Federal programs are also identified as required partners under the One-Stop delivery system with the intention of providing comprehensive services for all Americans to access the information and resources available to them in the development and implementation of their career goals. The intention of the One-Stop system is to establish programs and providers in co-located, coordinated and integrated settings that are coherent and accessible for individuals and businesses alike in approximately 600 workforce investment areas which will be established throughout the nation.

The Workforce Investment Act establishes State and Local Workforce

Investment Boards focused on strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials to build on existing reforms in order to implement innovative and comprehensive workforce investment systems. Although systemic change of the magnitude envisioned by the Workforce Investment Act is a long term process, State and local planning processes are required to be in place by July 1, 2000. The Work Incentive Grants will facilitate model service delivery for people with disabilities involving coordination of the multiple programs and agencies which frequently impact their ability to achieve self-sustaining employment, skill attainment and long range career opportunities. Recognizing that many One-Stop delivery systems may not currently have the capacity to provide comprehensive services to people with disabilities, the Work Incentive Grant is designed to provide seed monies for the enhancement of service delivery in the One-Stop delivery system.

Many people with disabilities are looking to the new workforce investment system to address their employment and training needs in a progressive, enlightened environment with cutting-edge technologies. They also expect the One-Stop delivery system to provide comprehensive services to meet multiple barriers which frequently limit their access to a productive, economically rewarding work life. These may include, but are not limited to, the availability of basic and skill development; vocational skill training or advanced educational opportunities; apprenticeship and entrepreneurial training; transportation assistance to reach training or employment; housing assistance or advise on retaining existing housing upon employment; and access to medical health coverage upon employment.

Additional Background Information

There are approximately 50 million Americans with disabilities, 30 million of whom are of working age. Of the latter, many are relegated to lives of poverty and reliance on public assistance and supports. The economic boom of recent years has had little to no impact on the more than 70% of those with significant disabilities of working age who are not employed. In addition, many people have hidden disabilities which may or may not be recognized or officially diagnosed but which impact their ability to obtain, retain or advance in employment.

Approximately 10 million people with disabilities are recipients or beneficiaries of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Many other individuals with disabilities receive public assistance under the Temporary Assistance for Needy Families (TANF) program. The benefits or payments to these individuals are generally at or below Federal poverty income levels.

Generally eligibility for Medicaid, access to subsidized housing and other benefits are automatically tied to receipt of SSI or TANF, while Medicare and some other public supports are closely linked to SSDI benefits. Public policy systems, particularly those related to necessary health coverage, have for many years encouraged dependency on income supports and created many obstacles to employment and economic independence.

The loss of health care benefits and other structural disincentives to working and achieving self-sufficient, living wages have been partially addressed in the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA) [Public Law 106–170] which, among other provisions, encourages States to enact expanded and more readily accessible health care coverage for working age individuals with disabilities. Although not authorized under the TWWIIA, the Department of Labor intends for the Work Incentive Grant program to further support the employment objectives of TWWIIA for SSI and SSDI recipients by enhancing the State and local workforce investment system for all people with disabilities.

The Department of Labor has worked with the Social Security Administration (SSA) and the Department of Health and Human Services (HHS) in designing the Work Incentive Grant program, in a coordinated and strategic effort to support the issuance and objectives of separate SSA's cooperative agreement and HHS's grant programs authorized under the TWWIIA. The SSA will be awarding $50,000 to $300,000 grants for a $23 million Planning, Assistance and Outreach program to establish the capacity to provide comprehensive information on work incentives to SSI and SSDI recipients throughout each State. Workforce Investment Boards and One-Stop systems, among other entities, are eligible applicants for the SSA Planning, Assistance and Outreach Cooperative Agreement program. The HHS Medicaid Infrastructure Grant program is authorized for five years with approximately $40 million to be awarded annually to State Medicaid Agencies for establishing Medicaid buy-in opportunities for individuals who are working. Each of the three grant programs is administered separately by its respective agency but are expected to be implemented in Fiscal Year 2000.

The Department of Education also provided input for the requirements of this Solicitation for Grant Application. The Presidential Task Force on Employment of Adults with Disabilities, established under Executive Order 13078, facilitated and provided guidance to this multi-agency process as part of their charge to design a coordinated and aggressive national policy that will bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general population.

III. Submission of Applications

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or (b) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

Hand Delivered Proposals. It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4 p.m., EST, August 1, 2000, at the specified address. Failure to adhere to the above instructions will be basis for a determination of nonresponsiveness.

Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

IV. Funding Availability and Period of Performance

The Department of Labor anticipates awarding 20–40 grants ranging from $500,000 to $1.5 million. The period of performance will be approximately 30 months from the date of execution by the Department. The grant funds would be available for expenditure until June 30, 2003 when the authority for these funds will expire. The Department may make subsequent grant awards, which would extend grant objectives, to the original grantees based on satisfactory performance and the availability of funds.

V. Eligible Applicants

Eligible applicants may be a State and/or Local Workforce Investment Board(s) (State Board/Local Board(s)) established under the Workforce Investment Act or other State/local public entities including, Vocational Rehabilitation, Mental Health, Mental Retardation/Developmental Disability, TANF; and/or a private non-profit organization including, but not limited to Centers for Independent Living (CILs), disability advocacy and provider organizations, federally-funded disability grant entities, and other non-profit organizations which provide services and/or advocacy for people with disabilities; or a consortium thereof.

To the extent practicable and possible, the Department of Labor is encouraging consortia of entities to develop and submit applications under this grant program. If the applicant is not the State or Local Workforce Investment Board, the Board(s) must be a partner in the consortium.

Applications can be statewide in scope. Statewide projects must propose strategies for enhancing and improving services to people with disabilities involving all local workforce investment areas in the State. State-wide grant projects should obtain and provide letters of commitment from local Workforce Investment Boards to the extent possible. However, a statewide project must include the State Workforce Investment Board as a consortium partner, with applicable letters of commitment provided in the application.

Indian and Native American Tribal entities, or consortia of Tribes, may apply for Work Incentive Grants. These would involve coordination of services and enhancements to a One-Stop system approach for people with disabilities in a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or workforce investment areas. In such cases, letters of commitment from Local Boards may not be applicable. Grants to Indian and Native American tribal grantees are treated differently because of sovereignty and self-governance established under the Indian Self-Determination and Education Assistance Act allowing for the government to government relationship between the Federal and Tribal Governments.

VI. Section Format Requirements for Grant Application

General Requirements

Applicants must submit four (4) copies of their proposal, with original signatures. The Application Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two single-spaced, single sided pages. A font size of at least twelve (12) pitch is required throughout.

There are three required sections of the application. Requirements for each section are provided in this application package. Applications that fail to meet the requirements will not be considered.

Section I—Project Financial Plan;
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Appendices, not to exceed 40 pages)

Section I. Project Financial Plan

Section I of the application must include the following two required elements: (1) Standard Form (SF) 424, Application for Federal Assistance, and (2) Budget Information Form and budget narrative. All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance (CFDA) number is 17.207. Section I will not count against the application page limits.

The financial plan must describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule") codified at 29 CFR part 97 (97.22), and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as OMB Circular A–110), codified at 29 CFR part 95 (95.27).

The financial plan must contain the following parts:

—Completed "SF 424—Application for Federal Assistance" (see Appendix A for required form.)
—Completed "Budget Information Form" by line item for all costs required to implement the project design effectively. (See Appendix B for these required forms.)
—Budget narrative/justification which provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

Please note: Work Incentive Grant project designs which incorporate development, procurement or implementation of information technologies involving linkage, and/or to assure accessible technologies in the One-Stop setting, must provide a 50 percent grantee match for those Work Incentive Grant funds which will be utilized for this (these) purposes. That is, if an applicant intends to use $50,000 in grant funds to develop, procure or implement information technology they must identify $50,000 to be provided by the applicant and/or consortium partner(s). Also, grant funds directed to development, procurement and implementation of these technologies cannot exceed 10% (not including matching funds) of the total grant award. Identification of these funds should be made noted in the remarks section of the Budget Information Sheet and described in the budget narrative/justification, including source of matching funds.

Section II. Executive Summary—Project Synopsis

[Format requirements limited to no more than two single-spaced, single-sided pages]

Each application shall provide a project synopsis which identifies the following:

- The applicant;
- The type of organization the applicant represents;
- Identification of consortium partners and the type of organizations they represent;
- The project service area;

• Whether the service area is an entire local workforce investment area, more than one local area, and/or all local areas in a State;
• The specific areas of focus in the announcement which are addressed by the project;
• The amount of funds requested;
• The planned period of performance;
• The comprehensive strategy proposed for providing seamless service delivery, for addressing the multi-faceted barriers to training and employment which affect people with disabilities, and for improving access for people with disabilities in the generic workforce system;
• The ways in which the proposal is coordinated with a State HHS grant and/or SSA benefits planner grant;
• How counseling and other support needs will be addressed in the One-Stop Center system;
• The actions already taken by the State or Local Workforce Investment Board to address the needs of people with disabilities in the One-Stop delivery system;
• The extent to which the One-Stop facilities and satellite site incorporate physical access for people with disabilities;
• The extent to which Vocational Rehabilitation is integrated or coordinated with the One-Stop delivery system;
• Data on the extent to which people with disabilities have been served under the prior Job Training Partnership Act program and under the Wagner-Peyser Act;
• The level of commitment the applicant and consortium members have to serving people with disabilities; and
• The extent to which the needs of individuals with disabilities from diverse cultural and/or ethnic groups will be addressed.

Section III. Project Narrative

[Format requirements limited to no more than forty (40) double-spaced, single-sided, numbered pages]

Section III of the application, the project narrative, must not exceed forty (40) pages for the Government Requirements/Statement of Work section, as described below in the "Required Content for Work Incentive Grant Applications—Program Year 2000." The forty (40) page limit includes any Attachments which are provided by the applicant. Letters of general support or recommendation for a proposal should NOT be submitted and will count against the page limits. However, letters of commitment are required from partner/consortia organizations, including State and/or Local Workforce Investment Board(s) clearly stating their intent to provide services and resources to the grant.

VII. Program Scope and Objectives

The Department of Labor, in consultation with the President's Task Force on Employment of Adults with Disabilities, has designed the Work Incentive Grant program to achieve the following objectives:

—Provide seamless service delivery within a One-Stop delivery system for people with a wide range of disabilities which may include both documented and undocumented physical, sensory, developmental/cognitive (e.g., mental retardation and learning disabilities, among others), mental and other health related functional disabilities.

—Maintain a referral source of diverse services and information that commonly impact the employability of people with disabilities, such as transportation, housing, education and training programs, access to technology, and health care coverage;

—Provide model One-Stop service delivery through availability of—

• comprehensive services and programs designed to meet multiple needs and common employment barriers such as a procedures for identifying those individuals with hidden disabilities through appropriate screening and diagnostic testing;
• state-of-the-art, fully accessible technologies and/or other accommodations that would be available for use in the One-Stop setting as well as establishing a process for the availability of accommodations in training settings; and
• knowledgeable, experienced and skilled staff support on a broad range of disability issues.

—Ensure access to knowledgeable benefits counselors who can do the following

• provide information on education and training program options and opportunities available under a broad array of programs such as Adult Education; Individuals with Disability Education Act for those under 22 without a high school degree; Vocational Education and School-to-Work programs;
• address the impact of employment on individual benefits such as SSDI, SSI, TANF, Medicaid, Medicare, subsidized housing, and food stamps;
• provide accurate information on the availability of Social Security work incentive programs and Ticket-to-Work options available to SSDI and SSI recipients;
• make available to employers detailed information on the array of tax benefits and incentives to employers of people with disabilities that provide financial support for workplace modifications and accommodations; and
• leverage the diverse range of program resources that may be critical to successful employment, retention and career advancement such as medical or psychological testing or transportation subsidies available to One-Stop customers in local areas, as applicable.

—Establish and carry out extensive and wide-ranging outreach to the disability community, including those with physical, sensory, developmental/cognitive (mental retardation and learning disabilities, among others), mental and other health related impairments, so that core and Title I workforce services are readily available and welcoming to customers with disabilities;

—Ensure linkages and technical assistance to public and private providers of services to people with disabilities such as centers for independent living; State Developmental Disability Councils; State and local mental health agencies; Federal Social Security Agencies, State Medicaid Agencies, Mental Retardation/Developmental Disabilities Offices, TANF agencies; public special education and adult education programs, private schools and training programs designed to meet the needs of persons with disabilities, and other non-profit organizations which support integration into the One-Stop delivery system and which have knowledge regarding the benefits of employment and training information and services available through the workforce system.

—Develop One-Stop capacity as a valued provider of choice for beneficiaries of SSDI and SSI, and to facilitate One-Stop eligibility to be an Employment Network provider established under provisions of the TWWIIA, which assumes responsibility for coordination and delivery of services under the Ticket to Work program, meets professional and educational qualifications, where applicable, and provides appropriate employment services, vocational rehabilitation services, or other support services either directly or by entering into agreement with a qualified entity.

• Leverage available funds and services, including TANF and public education resources, currently available to individuals with disabilities under a variety of public and private non-profit resources to achieve the individual objectives of these customers; and

• Provides individual customer choice as a primary, key component of program availability and delivery which provide models for how Individual Training Accounts (ITAs) under Title I of WIA, SSA Ticket-to-Work vouchers, Vocational Rehabilitation resources, and other appropriate funding sources can be used to provide seamless service delivery that is responsive to the customer.

—Implement information technologies which may be used to facilitate linkage or consolidation of information or services provided by existing State, local and other Federal program providers; and/or establish innovative accessible technologies in the workforce system to assure universal access to One-Stop information and resources for individuals with disabilities. Please note: Work Incentive Grant project designs which incorporate development, procurement or implementation of information technologies involving linkage, and/or to assure accessible technologies in the One-Stop setting, must provide a 50 percent grantee match for those Work Incentive Grant funds which will be utilized for this (these) purposes. Also, grant funds directed to development, procurement and implementation of these technologies cannot exceed 10% (not including matching funds) of the total grant award.

To the extent appropriate and practicable, the applicant Work Incentive Grant proposals should be developed in coordination with SSA's Benefits Planning, Assistance, and Outreach Cooperative Agreement program and/or HHS's Medicaid Infrastructure Grant program as part of a multi-pronged approach to increase the employment rate of people with disabilities. For example, an applicant for the Work Incentive Grant might consider applying for the SSA Benefit Planning, Assistance and Outreach Cooperative Agreement program, or coordinate with entities who may be applying, with the intent of establishing benefits planning capacity in a One-Stop Center. However, there may be additional strategies to support the Medicaid infrastructure development.

Likewise, the Department is encouraging coordination with formula and competitive Welfare-to-Work grant programs. Coordination should also occur with State/Local five year plans required under Title I of WIA.

The SSA Benefits Planning, Assistance, and Outreach Cooperative Agreement Request for Proposal and HHS Medicaid Infrastructure Grant Request for Application requirements are accessible through ETA's disAbility Online homepage: http://wdsc.org/disability. Additional information and resources are also available at this website.

VIII. Monitoring and Reporting

Monitoring

The Department shall be responsible for ensuring the effective implementation of each competitive grant project in accordance with the provisions of this announcement and the negotiated grant agreement. Applicants should assume that on-site project reviews will be conducted by Department staff, or their designees periodically throughout the implementation of the grant. Reviews will focus on the timely project implementation, performance in meeting the grant's programmatic goals and objectives, expenditure of grant funds on allowable activities, integration and coordination with other resources and service providers in the local area, and project management and administration in achieving project objectives. Work Incentive Grants may be subject to other additional reviews at the discretion of the Department.

Reporting

Grantees will be required to submit periodic financial and participant reports under the Work Incentive Grant program covering the workforce area(s) included in the grant project design. Customer survey information will also be required. Specific reporting requirements have not been established at the time of issuance of this Solicitation for Grant Application. However, data collection will probably incorporate some detailed information about the people with disabilities being served under the grant, by the grant applicant and consortium partners where applicable. To the extent possible, reporting will be conducted electronically through web-based applications.

1. Financial reports will be required on a quarterly basis. This will be the Standard Form 269—Financial Status Report (FSR).

2. Customer Satisfaction Surveys: Customer satisfaction surveys will be required to be conducted with people with disabilities applying for services through the One-Stop delivery system(s) participating in the grant award. The Department of Labor will issue guidelines and reporting instructions related to the Customer Satisfaction Survey process at a later date.

3. Other Reporting: The Department of Labor may require additional reporting requirements, including implementation progress reports and quarterly narrative and/or data reports on participants served in the workforce area(s) included in the grant for grant management and knowledge development purposes. The Department of Labor will issue guidelines and reporting instructions related to progress, narrative and participant reporting at a later date.

IX. Government Requirements/ Statement of Work—Project Narrative

The Project Narrative, or Section III, of the grant application should provide complete information on how the applicant will address government requirements and statement of work provisions outlined here, and not to exceed forty (40) double-spaced numbered pages, including appendices. The application should include information of the type described below, as appropriate.

Description of Service Area and Consortium Configuration

Information provided in this section will be evaluated predominately under the "Statement of Need" criteria.

—Identify the number of workforce areas in the State and the jurisdiction of each local workforce investment area(s) in the State.

—Identify what local areas(s) in the State will be covered by the project and whether the project is Statewide, multiple local areas or a single local area.

—Identify consortium members if any, their primary mission irrespective of participation in the grant proposal, and what political and geographic jurisdictions (*e.g.*, cities, counties, subsections of cities/counties) they cover.

—Identify the percent of people with disabilities in the State and/or local area, including the percentage of people who are beneficiaries of SSDI and/or SSI.

—Identify the most recent unemployment rate(s) in the workforce investment area(s) covering the project.

—Describe the significant deficiencies in the State or local workforce investment system that represent barriers to employment for people with disabilities.

—Identify additional State and/or local funds and resources that will be used to support the overall objectives of the grant and which will assist in addressing the identified issues the grant project is addressing.

—For proposals targeted to a specific Indian community or covering multiple Tribal entities which may cut across multiple States and/or local areas, describe the overall approach of the

project, identify the inadequacies and deficiencies of the service delivery to the applicable community, and how the project expects to address these.

Disability Related Knowledge and Skills

The Department will evaluate information provided in this section predominately under the "Comprehensive Action Plan/Statement of Need" criteria.

—Describe how the project will address a primary objective of the Work Incentive Grant program to assure the integration of people with disabilities into the workforce investment system, including the availability of WIA Title I programs and services, as well as the many partner programs operating through the One-Stop delivery system.

—Recognizing that the One-Stop delivery system may not have extensive knowledge or skills in working with people with disabilities, describe the level of expertise of the One-Stop system in the local area(s) addressed in the grant and the projects plans for addressing inadequacies.

—Describe the overall status and actions taken to-date by the One-Stop delivery system to address services to people with disabilities. This should include actions to assure State and/or local facilities are physically and programmatically accessible, training provided to staff, the number and percent of people with disabilities receiving services under JTPA and Employment Service programs during the previous three years compared with that of people without disabilities, and plans to increase services to people with disabilities, if applicable.

—Identify the provisions of the Memorandum of Understanding or other agreements between Title I of the WIA, State Vocational Rehabilitation (VR) Agency, the State Rehabilitation Council, and the State and/or local Workforce Investment Board in terms of the provision of services to people with disabilities; the plans for cost sharing; the arrangements for referral of people with disabilities between Title I of the WIA and VR as appropriate; the extent of integration and co-location of VR in One-Stop Centers, including sharing of MIS systems or participation in case management data base technologies; the extent to which there is joint funding of participant services or leveraging of funds to expand access to services; and utilization of Individual Training Accounts (ITA's) for people with disabilities.

—Identify plans and strategies to develop the capacity of the comprehensive One-Stop Center to function as an Employment Network under the TWWIIA. Project plans in this regard should involve building the capacity of the WIA Title I program and One-Stop system so that more in-depth services and information will be readily available to individuals with disabilities. Additionally, the description of increased capacity should be as an adjunct to the State Vocational Rehabilitation Agency which is an automatic Employment Network provider under the TWWIIA. Descriptions may include the planned coordination, interaction and relationship between the universal One-Stop service delivery system and Vocational Rehabilitation services, planned memorandums of understanding on how the Ticket program may be implemented within the One-Stop system or in partnership with non-profit entities in the local area, and expectations for more services directed to SSI and SSDI recipients.

—Identify whether assessment tools are utilized to identify individuals with learning disabilities in the One-Stop delivery system, including (1) whether assessment tools are utilized to identify individuals with learning disabilities in the One-Stop; (2) plans and processes to identify applicable assessment tools, train staff and incorporate such assessments as part of the service delivery structure; and (3) use of individualized, person-driven processes for identification of strengths, needs and desires related to employment.

Summary of Strategy of Collaboration/ Coordination

Information provided in this section will be evaluated predominately under the "Comprehensive Service Strategy" and "Collaboration and Coordination" criteria. This should include the identification and interaction of a variety of disability-related organizations and entities. These may include but should not be limited to the following: Independent Living Centers, State Mental Health, Mental Retardation/Developmental Disability Agencies, State Planning Councils on Developmental Disabilities, State Independent Living Councils (SILCs), State Rehabilitation Councils, State Governors' Committee, State Medicaid Agency, State and/or local TANF agency, Vocational Rehabilitation Agency and local Welfare-to-Work Programs.

—Identify specific organizational/ service provider capabilities that will be provided as a result of grant activities to ensure the full range of assistance required for receiving and participating in training, skill development, job development, job placement in unsubsidized employment, job retention services and career advancement opportunities for individuals with disabilities.

—Describe the process that will be used to maintain and expand the service structure for individuals with disabilities accessing the workforce investment system after receipt of the grant funds. Describe what linkages are expected to occur that will be sustained over time and what resources various public and private entities will make available in the workforce system that ensure expanded services and integration of people with disabilities.

—Describe the extent to which people with physical and mental disabilities are represented in the development and implementation of plans to improve and enhance One-Stop services for people with disabilities, plans for outreach and marketing to the disability community and organizations which represent or work with people with disabilities; and plans for training disability-related organizations on the resources and programs available to them in the One-Stop system.

—Describe coordination and linkage with regional Disability Business and Technical Assistance Centers (DBTACs) and State Governor's Committees on Employment of People with Disabilities. Have DBTACs provided training to the One-Stop delivery system on the Americans with Disabilities Act (ADA), section 504 of the Rehabilitation Act, or other disability-related training? If not, are plans to do so incorporated into the applicant project?

—Describe coordination and linkage with the State and local Independent Living Center (CIL) system. Are they part of the consortium membership? If not, what outreach is planned to establish linkage with them and their core constituency of people with disabilities?

—Describe coordination and linkage with Mental Health Departments, Mental Retardation/Developmental Disability Agencies, State Councils on Developmental Disabilities, State Vocational Rehabilitation, and Councils on Employment, and other local provider or advocate organizations serving individuals with developmental and/or psychiatric disabilities. Are they part of the consortium membership? If not, what outreach is planned to establish linkage with them and their core constituency of people with disabilities?

—Describe coordination and linkage with Learning Disabilities and Training Dissemination hub centers established under grants from the Department of Education's Office of Vocational and

Adult Education. Have these centers provided training to the One-Stop delivery system or are plans to do so incorporated into the applicant project?

—Identify how State TANF programs and Welfare to Work (WtW) competitive grant projects will be linked or leveraged with objectives of the applicant's project. States and local areas have been in the process of implementing numerous WtW projects under formula and discretionary grants. Additionally, many TANF agencies have refocused resources on skill attainment and employment outcomes for TANF recipients. In addition to the fact that many TANF recipients have functional disabilities, many WtW and TANF projects address significant structural barriers to employment which are similar in nature to those facing most individuals with disabilities (*e.g.*, health, housing, transportation). Systems which address these barriers for WtW and TANF recipients can be expanded or leveraged to address similar barriers for people with disabilities.

—Describe how the planned project will be coordinated with grant programs which are funded under the SSA Benefits Planning, Assistance and Outreach Cooperative Agreement and HHS Medicaid Infrastructure Grant programs, if applicable.

Analysis of Barriers to Employment Impacting People With Disabilities in State/Local Workforce Investment Area

The Department will evaluate information provided in this section under "Statement of Need" and "Coordination and Collaboration" criteria.

—Identify public and private non-profit provider entities participating in the grant program and what barriers to employment may be addressed by the programs and services that are contributing to the overall applicant proposal. Specifically, describe how the State or local area is addressing (1) health insurance benefits, including relevant Medicaid and/or Medicare provisions, required by many people with disabilities to enter and retain employment; (2) the current transportation infrastructure, the availability of public transportation, and how individuals with all types of disabilities will access training and employment; (3) housing, food stamps and other support services; and (4) assistive technology needs.

—Describe how public supports needed by people with disabilities may be affected by their employment or training and State or local conditions and actions to sustain benefits and services following successful job placement. For example, does the State or local area have provisions to continue supported or Section 8A housing, where applicable, for individuals who enter unsubsidized employment? Has the State adopted Medicaid "buy-in" options, or are there Medicaid waivers which extend health care coverage for individuals who enter employment?

—If the applicant's proposal does not incorporate the capacity for benefits counselors or planners, what coordination is planned that ensures that individuals with disabilities who access One-Stop Center services will be able to obtain accurate work incentive and benefits information from knowledgeable and skilled staff?

Innovative Strategies and Model One-Stop Service Designs

The Department will evaluate information provided in this section predominately under the "Innovations and Model Services" criteria.

—Describe how the project will provide innovative approaches to increasing competitive, unsubsidized employment to individuals with disabilities.

—Provide information on how the project adds value to the workforce system from a national perspective (*e.g.*, fills a gap in policy or service approach), and the potential for replication and dissemination to the workforce system at large.

—Describe investment plans, strategy and rationale for implementation of innovative technologies, whether to establish linkages with disability related entities or to implement innovative accessible technologies (*e.g.*, video interpreting services for clients who are deaf), including the source(s) of the 50 percent match requirement discussed in Section VI under Project Financial Plan.

—Identify the scope of technology implementations, if applicable, and the extent to which implementation is comprehensive and across the workforce area(s) and/or statewide.

—Identify individualized strategies that establish client control of training funds, VR funds, ITAs, or other funding sources to which these individuals may have access, and co-mingle funds in a seamless, customer friendly manner, including plans for obtaining waiver authority to the extent program requirements necessitate this.

—Identify plans or strategies to deploy Ticket-to-Work voucher provisions for beneficiaries of SSDI and recipients of SSI. At the time of this Solicitation for Grant Application, the requirements for implementation of the Ticket will not have been drafted, nor will the number of pilot States participating in a pilot process known. Therefore, the Department recognizes that descriptions for implementing the Ticket may be limited.

—Describe strategies to foster entrepreneurial and self-employment options utilizing ITAs, Plans for Achieving Self-Support (PASS) and other SSA work incentives, and Medicaid coverage for individuals with disabilities who start or return to work.

—Describe strategies to transition youth with disabilities from school-to-work environments using existing systems such as School-to-Work and One-Stop system infrastructures.

—Identify plans for ensuring competitive, unsubsidized employment for individuals with the most significant disabilities, including how the provision of job development, job carving, job coaching, supported employment, and personal assistance services will be addressed when applicable, and plans to integrate individuals with the most significant disabilities into mainstream workforce settings through individualized job development and placement strategies.

—Provide information on how techniques such as job carving and individualized job development may be utilized under Title I of the WIA, or plans to expand this capability.

Employer Related Linkages

The Department will evaluate this section predominately under the "Innovations and Model Services" criteria.

—Describe specific approaches for developing relationships with and support of area employers which establish employment opportunities for individuals with disabilities accessing the One-Stop delivery system, including any commitments by employers to hire these individuals.

—Describe opportunities for competitive employment for individuals with disabilities will be provided or developed within the local workforce investment area and how this is unique or different than what is normally performed by the applicant(s).

—Identify available Federal and State tax incentives available to employers when hiring an individual with a disability; how this information will be marketed and disseminated to employers, the individual and workforce staff; and how employers may use such tax credits to address structural and technological accommodation needs.

—Describe opportunities for increasing integrated, competitive employment through use of strategies

such as individualized job development for individuals with the most significant disabilities currently working in segregated facilities or waiting for employment services.

Implementation and Project Management Plan

The Department will evaluate this section predominately under the "Demonstrated Capability" criteria. Applicants must be able to document that they have systems capable of satisfying the administrative and grant management requirements for Work Incentive Grants.

—Identify the critical activities, time frames and responsibilities for effectively implementing the project, including the management and evaluation process for assuring successful implementation of grant objectives.

—Include a project organizational chart which identifies the staff with key management responsibilities, including a matrix of organizational responsibilities of key entities and participating consortium organizations, where applicable.

—Describe the specific experience of the applicant(s) in serving people with disabilities, in providing workforce services, in addressing specific barriers to employment, in achieving expected outcomes in the delivery of such services/programs, and in implementing and administering specific project plans of the grant project. For example, such information might include the local Department of Transportation as a key partner agency addressing transportation barriers and how this entity has participated in similar efforts in the past and the success of these past efforts, and potential success of coordination on the applicant(s) grant project.

X. Review Process and Evaluation Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Department may elect to award grants either with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. The Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the Government, considering factors such as:

—Panel findings;

—Geographic distribution of the competitive applications;

—The availability of funds.

Criteria

The following criteria, and the weights assigned to each, will apply to the review of the responsiveness of the information requested in this application to this announcement:

1. "Statement of Need", [15 points] which will consider the scope and targeting of the overall project design to address deficiencies and requirements of the current workforce delivery system.

2. "Comprehensive Service Strategy", [30 points] which will consider the extent and quality of the applicant's plan to improve and enhance workforce delivery services to people with disabilities.

3. "Collaboration and Coordination", [20 points] which shall consider the extent and quality of the consortium partnerships that are involved in, and making, substantial contributions to the project, including the commitment to maintain and expand the capacity to serve the target population with local and workforce resources over a sustained period of time.

4. "Innovations and Model Services", [20 points] which shall consider the extent and degree of innovation represented in the applicant plans which go beyond the expected and predictable availability of accessible facilities and programs for people with disabilities, including innovative accessible technologies implemented on a system wide basis.

5. "Demonstrated Capability", [15 points] which shall consider the extent to which the applicant and its consortium partners demonstrate the knowledge and skills to address the diverse needs and the diversity in population of people with disabilities, and the extent to which the applicant demonstrates the ability to effectively execute grant management responsibilities.

Signed at Washington, DC, this 22nd day of May, 2000.

Laura Cesario,

Grant Officer.

Appendix A: SF–424

Appendix B: Budget Information Form

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	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 the 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. Municipa
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. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

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 ave 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) & 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 this 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 required.
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 the project.

Item:	Entry:
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 which you are required to provide with W2 forms.*

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. Also include a detailed description of equipment to be purchased including price information.*

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.

[FR Doc. 00–13153 Filed 5–24–00; 8:45 am]
BILLING CODE 4510–30–C

LEGAL SERVICES CORPORATION

Grants Cooperative Agreements; Availability etc.: Civil Legal Services to Poor—Various States

AGENCY: Legal Services Corporation.

ACTION: Program Letters 98–1 and 98–6 regarding statewide planning and Grant Assurances for FY2001.

SUMMARY: Program Letters 98–1 and 98–6 regarding statewide planning were issued in 1998 to solicit input on and assist recipients of Legal Services Corporation funding in improving the delivery of legal services to low-income persons. Recipients of such funding must also agree to the Grant Assurances for FY2001 as part of the competitive bidding process.

EFFECTIVE DATE: June 26, 2000. Comments must be submitted on or before this date.

FOR FURTHER INFORMATION CONTACT: Comments should be submitted to Victor M. Fortuno General Counsel, Office of Legal Affairs, Legal Services Corporation, 750 First Street, NE, Washington, DC 20002–4250; 202–336–8800.

SUPPLEMENTARY INFORMATION: In 1998 the Legal Services Corporation (LSC) issued Program Letters 98–1 and 98–6 to all LSC recipients. These program letters solicited input from LSC recipients on improving the delivery of legal services to low-income persons through statewide planning and coordination among LSC recipients. These letters are also available via the Internet at http://ain/ainboard/RFP/Appxcvr.htm in Appendix I. Although not required to publish these documents, LSC has decided to do so. Statewide planning has become an increasingly important aspect of the delivery of legal services to low-income persons.

All recipients of LSC funding must agree to the Grant Assurances. This document is also available via the Internet at http://ain/ainboard/ainboard.htm under Application Forms. The Grant Assurances addresses the recipient's agreement to comply with all applicable laws, rules, regulations, guidelines, instructions, etc. and to cooperate fully with all auditing, monitoring and compliance activities and requirements. Although not required to publish this document, LSC has decided to do so.

Comments received by LSC regarding these documents will be considered as part of LSC's ongoing process of evaluating the best means of delivering legal services to low-income persons and ensuring LSC recipient compliance with all applicable laws, rules, regulations, guidelines, instructions, etc.

Victor M. Fortuno,

Vice President for Legal Affairs and General Counsel.

Program Letter 98–1, February 12, 1998, State Planning

Summary

This Program Letter calls upon all LSC recipients to participate in a state planning process to examine, from a statewide perspective, what steps should be taken in their states to develop further a comprehensive, integrated statewide delivery system. State planners should evaluate whether all programs are working in a coordinated fashion to assure that pressing client needs are being met, that sufficient capacities for training and information sharing exist, that programs are moving forward together on technology, and are collaborating to increase resources and develop new initiatives to expand the scope and reach of their services.

In states with a number of LSC-funded programs and/or the presence of very small programs, a key question to be answered is whether the current structure of the state delivery system, and specifically the number of programs, constitutes the most effective and economical way to meet client needs throughout the state.

The state planning process should develop a report to be submitted to LSC on or before October 1, 1998. We will be guided by your recommendations when making our funding decisions for FY 1999 and beyond.

Background

1995 Program Letter. In July 1995, in anticipation of Congressional action on LSC's 1996 appropriation, we asked recipients in each state to participate in the development of a plan for the design, configuration and operation of LSC-funded programs in the state. In view of potential LSC funding cuts and Congressional restrictions on client services, we were especially concerned that recipients work closely with other stakeholders (*e.g.*, state and local bar associations, IOLTA funders, the judiciary, client groups, non-LSC-funded programs, and others with an interest in legal services) to develop an integrated delivery system to address client needs. A subsequent August 1995 Program Letter outlined the issues and criteria the state planning process should address. Included were integration of LSC-funded programs into a statewide legal services system; advisability of consolidation of programs; consideration of efficient intake and provision of advice and brief service; appropriate use of technology; engagement of pro bono attorneys; and development of additional resources.

Responses to Changes in Laws Affecting Clients and LSC Recipients. Much has occurred since August 1995. Fundamental changes have been made in laws and programs affecting eligible clients—changes which have increased clients—need for legal information, advice, and representation. At the same time, LSC appropriation measures have resulted in deep funding cuts for many programs, elimination of LSC funding of national and state support entities, and dramatic changes in the range of services LSC recipients are permitted to perform. In response, many states have initiated planning processes, developed new partnerships to leverage resources, expanded funding sources, implemented new technologies, and launched innovative methods for serving clients.

Efforts to develop and strengthen comprehensive delivery systems in order to improve and expand client services continue in many states. Equal Justice Commissions, Bar sponsored committees, and organizations of legal services providers continue to explore ways to maximize services in a changed and changing environment. LSC supports these ongoing state efforts and encourages others.

1998 Grant Decisions. In the 1998 LSC grant competition, we determined that grants in several states that were eligible for three year funding should be made for a shorter period. For North Carolina, grants were made for one year. For New York, New Jersey, Pennsylvania and Virginia, grants were made for two years. The decision to award grants for a shorter period was made for two reasons: (1) To encourage recipients in these states to develop further their plans for a comprehensive, integrated statewide delivery system; and, (2) concern that the number of LSC-funded programs in these states may not constitute the most economical and effective configuration for delivering legal services to the low-income community.

1998 Program Letter. This Program Letter calls upon all recipients to re-examine and adjust as necessary their state delivery plans in order to further improve and expand legal services to eligible clients within the state.

A Comprehensive, Integrated Statewide Delivery System

In re-evaluating delivery plans, recipients should examine the progress they have made in the past two and one

half years in developing a comprehensive, integrated statewide delivery system. Careful planning and coordination is necessary to insure that pressing legal needs do not go unmet and that resources are used wisely and economically. States must continue to innovate and develop new strategies and alternative delivery models to make the most of scarce resources—to reach more clients, and to provide higher quality services through enhanced use of information technology; centralized intake systems providing advice, brief services, and referrals; expansion of community legal education, pro se, and other methods promoting client self-help; better coordination with volunteer private attorneys; and other, similar initiatives requiring substantial resources and expertise to undertake.

There are many ways for states to achieve these goals. Many excellent models exist of statewide fundraising, integrated technology, statewide and regional hotlines, pro se projects, taskforces and training. Recipients should evaluate which approaches will work best in their states to achieve an even stronger, more effective system for addressing client needs.

Recipients must also examine how the present configuration of programs, and specifically the number of programs, impacts upon the overall effectiveness of the state delivery system. In this regard, it is especially important that each participant look at client services, not from the view of just one city, or one county, or one program, but from a statewide perspective.

What Is Required by This Letter

In the past two and one half years, several states have undertaken extensive processes to evaluate their delivery systems and have implemented, or are in the process of implementing, many state planning recommendations. Additionally, some states have ongoing planning processes involving a wide variety of stakeholders in the civil justice system. We do not intend such states to repeat past, or supplant current processes. Instead, we ask recipients to either work within ongoing processes or develop new ones appropriate to the situation in each state. In either case, we hope recipients and other stakeholders will view this process as an opportunity to join together to strengthen the delivery system and improve and expand services to clients.

In this context we call upon each LSC-funded program to share responsibility for ensuring that a statewide planning process, whether ongoing or to be initiated, addresses the questions discussed further below. For each question state planners should:

- Assess the strengths and weaknesses of the current approach;
- Establish goals to strengthen and expand services to eligible clients; and
- Determine the major steps and a timetable necessary to achieve those goals.

A report should be submitted to LSC on or before October 1, 1998. [1] If a state has recently developed a plan which addresses the substance of one or more of the following questions, for those questions, the state need only report on the pertinent section(s) of that plan.

In exceptional cases, it may not be possible for a state planning process to fully address all of the following questions. In such cases, recipients should contact the LSC staff member responsible for their state.

The questions to be addressed are:

1. How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?

2. Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?

3. What are the major barriers low-income persons face in gaining access to justice in the state? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?

4. Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?

5. What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?

6. What statewide financial resources are available for legal services to low-income persons within the state? How can these resources be preserved and expanded?

7. Where there are a number of LSC-funded programs and/or the presence of very small programs, how should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?

1. Intake and the Provision of Advice and Brief Services

How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?

A successful intake system is critical to effective and comprehensive delivery of legal services. Over the past two years many programs have instituted centralized telephone intake and delivery systems which provide high quality advice and brief service assistance, and promptly refer clients whose problems require more assistance to program case handlers or other resources. In a number of states, statewide or regional systems, using advanced telephone and computer technology, have consolidated these functions in one location where trained, experienced staff provide prompt access for clients and minimize the risk of multiple referrals or loss of clients. These systems improve the quantity and quality of advice, brief service and referral assistance while increasing the number of extended service cases which can be handled by the program.

State planners should evaluate the current status of intake and delivery of advice and referral services within the state and develop strategies for improvement. Consideration should be given to developing regional and statewide intake and delivery systems which:

- Are client-centered, providing ease of access to legal services and prompt, high quality assistance or referral;
- Use specialization to enhance case evaluation and provision of advice, brief service and referral assistance;
- Make effective use of technology; and
- Provide oversight and follow-up to ensure high quality legal services and client satisfaction. .

2. Effective Use of Technology

Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?

Within individual programs, effective use of technology can reduce the cost and substantially enhance the quality of

[1] LSC will provide guidance at a later date on the format for this report

services. Collectively, technology can dramatically improve the capacity of staff throughout the state to quickly exchange and share information, improving their ability to stay current with the law, develop legal strategies, write briefs and otherwise serve clients. In the past two years, many programs have significantly increased their technological capacities. On a statewide level, programs have used new technologies to establish E-mail communication with all legal services staff throughout the state; to connect with other service providers; to exchange information with private attorneys participating in PAI efforts; to establish centralized brief/pleadings/ forms/manuals/ information banks; to create resource centers for information on state law and policy developments; and to establish unified case management systems which allow for data collection and outcome measures. New technologies involving the Internet and advanced telephone and computer applications have also been used to provide legal and program resource information to clients.

Improving and staying current with technology is costly and makes it all the more important that states take a unified approach and develop a technology plan that will maximize collective capacity while minimizing cost. A state technology plan should establish reasonable goals and set forth steps to:

- Assure that all programs have networked computer access for all staff; integrated case management; computerized timekeeping; E-mail and the ability to electronically transfer documents; computerized financial management systems; and technological support;
- Develop or improve compatible technological capacities which will allow all staff, statewide, to communicate with each other, share information, and take advantage of other efficiencies made possible by computerization; and
- Use new technologies to provide legal and program resource information to clients and other interested persons.

3. Increased Access to Self-Help and Prevention Information

What are the major barriers low-income persons face in gaining access to justice in the state? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?

Pro se, community legal education and access to courts efforts have great potential to address many of the legal needs of low-income persons. Programs in many states utilize these methods to increase legal information available to the public, empower clients to advocate on their own behalf, and increase access to the courts for all low-income people. Given the intensive effort required to implement such strategies, and the influence state laws and rules have on such initiatives, often these results can be realized more easily by coordinated state level efforts. In several states, for example, collaboration with state bar committees and state judicial administrations has resulted in rule changes, publication of pro se oriented materials and more accessible court systems. Likewise, the development of self-help and community legal education materials has benefitted from concerted statewide efforts involving a variety of organizations working to make justice more accessible.

State planners should evaluate the status of pro se, community legal education, and access efforts in their state and determine what steps should be taken statewide to enhance their effectiveness in meeting client needs. Consideration should be given to:

- Statewide coordination and/or production of pro se and community education materials, such as brochures in multiple languages, videos, cable-access TV programs, and projects designed to take advantage of new technologies such as computerized pro se programs and the world wide web; and
- State level initiatives, including efforts with bar associations, the judiciary and other interested parties to increase access to the courts.

4. Capacities for Training and Access to Information and Expert Assistance

Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?

In the last two years several states have developed new or strengthened existing capacities to ensure that staff and pro bono attorneys throughout the state receive necessary training and have access to information and expert assistance essential for the delivery of high quality legal services. These states employ a variety of methods to provide staff and pro bono attorneys with training on substantive law and skills development, practice manuals and related poverty law materials, information on poverty law developments and strategies, and co-counseling for less experienced staff and pro bono attorneys. Communication, planning and ongoing discussion concerning major legal needs, poverty law developments, effectiveness of approaches, and commonalities in legal work, helps ensure productive use of resources. The use of new technologies has helped maximize the effectiveness of these efforts.

State planners should evaluate current capacities for the provision of training and related services essential for the delivery of high quality legal services. Planners should:

- Assess how a statewide approach can address the needs for these services of staff and pro bono attorneys throughout the state; and
- Determine the steps necessary to provide these services as effectively and efficiently as possible.

5. Engagement of Pro Bono Attorneys

What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?

In the past two years, several states have been successful in enlisting or re-enlisting the state Bar, the judiciary and others in developing and supporting private attorney involvement throughout the state. These efforts have helped local private attorney involvement programs expand participation rates and the range and types of services available to clients. State planners should evaluate the current status of private attorney involvement in the state and consider how statewide strategies can increase engagement of pro bono attorneys and benefit clients throughout the state, including areas of the state with lower private attorney involvement.

Consideration should be given to:

- Renewed efforts to involve the Bar, the judiciary and other leaders in the legal community in promoting private attorney involvement;
- Providing greater opportunities for attorney participation in a full spectrum of legal work, including advice and brief service, negotiation, administrative representation, pro se classes, transactional assistance, and simple and complex litigation;
- Providing greater opportunities for attorneys to assist programs with training, co-counseling and mentoring staff; and
- Providing greater opportunities for law schools, corporate counsel, government attorneys, and other professionals to engage in pro bono activities.

6. Development of Additional Resources

What statewide financial resources are available for legal services to low-income persons within the state? How can these resources be preserved and expanded?

In the past two years, many programs have increased the resources available to them through innovative grant projects, local fundraising and other efforts. Even more dramatic, however, are the increases programs have received in many states through collective development and/or expansion of statewide revenues such as state appropriations, filing fee surcharges, state fundraising campaigns, state bar dues checkoffs and direct state bar grants. Whether new or expanded, these revenues have almost always been the product of thoughtful planning with programs and other stakeholders working together.

State planners should evaluate the possibilities for further statewide resource development and develop a statewide strategy to preserve, build, and/or create new financial and non-financial resources in their state. Since program efforts to build such statewide resources are more successful when many stakeholders participate, it is especially important for planners to involve a variety of community leaders in these efforts.

7. Configuration of a Comprehensive, Integrated Statewide Delivery System

Where there are a number of LSC-funded programs and/or the presence of very small programs, how should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality legal services to eligible clients within a comprehensive, integrated delivery system?

In most states, the present delivery structure reflects national funding decisions made in the 1970's. In many states, those decisions were not determined by analysis of what delivery structure would yield the most economical and effective services to clients throughout the state. Moreover, those decisions were made before such major developments in legal services delivery such as IOLTA funding, private attorney involvement, law school clinical programs, hotlines, the emergence of other civil legal aid providers, and restrictions on recipients' non-LSC funds; and before the information revolution and the opportunities it presents with personal computers, E-mail, sophisticated telephone technology, and the Internet. In light of developments over the past twenty-five years, and especially since 1995, it is time to take a fresh look and re-evaluate those structures.

Re-evaluation is particularly critical in states with a number of LSC-funded programs and/or the presence of very small programs. States with many programs often suffer from uneconomical and inefficient redundancy of effort, or no effort at all, in technology, training, fundraising, and development of client services such as intake, advice and referral systems or client education materials. Similarly, small programs often lack the resources necessary to develop proper staff supervision or appropriate specialization, or to acquire current technology necessary for maximum effectiveness.

In addition, while individual programs may excel, a large number of programs or the presence of small programs may result in unnecessary diversion of the state's resources from client services to administrative overhead. Each program, no matter how large or small, must devote significant resources to A–133 audits, state and federal tax and wage reports, funding applications, recordkeeping, personnel policies, purchase and maintenance of technology and equipment, and other administrative tasks. Experienced and accomplished lawyers spend time on program administration when they could be using their talents to represent clients, train or mentor new lawyers and otherwise lead their program's legal work.

Where these conditions exist, state planners must consider whether consolidation of programs would make better use of resources available in the state.

There is no magic number of programs or a single delivery model that fits all states. In some states, a statewide LSC provider makes the most sense; in others, a regional approach or other configuration may be appropriate. Each state must examine what configuration, from a statewide perspective, maximizes services and benefits for clients throughout the state. Factors to be considered include:

- Size, complexity, cultural and ethnic diversity/homogeneity of client population.
- Geographic, physical, and historical distinctions and affinities within the state.
- Variation in local client needs and ability to respond and set priorities accordingly.
- Assessments of programs' performance and capacity to deliver effective and efficient legal services in accordance with LSC and other professional criteria.
- Ease and efficiency of client access to services and opportunities for improvement.
- Capacity to efficiently and effectively conduct community legal education, pro se and outreach activities.
- Level, uniformity, and plans for further development of technological capacity.
- Current levels of private bar involvement and potential for expansion.
- The availability of training, expert assistance, and information about legal developments.
- Current funding sources and potential to expand resources available to all programs.
- Cultural and ethnic diversity of program leadership and management.
- Relative costs associated with fiscal and administrative responsibilities and potential savings in management, board and administrative costs.

In making grants for FY 1999 and beyond, we will look closely at each state where there is currently a number of LSC-funded programs and/or the presence of very small programs to assess whether careful consideration has been given to consolidation of LSC programs. We hope, and have faith, that in these states, this planning process will result in plans for merger and consolidation of programs and integration of services on a broader scale than we have previously seen, and that each state's plan will result in a configuration that is efficient and effective in providing access to justice for the state's low-income clients.

Questions

LSC staff will be contacting recipients to discuss this Program Letter. In the meantime, if you have questions, please contact the LSC staff member responsible for your state.

Program Letter 98–6, July 6, 1998, State Planning Considerations

Introduction

On February 12, 1998, the Corporation issued Program Letter 98–1 calling upon all LSC recipients to participate in a state planning process to examine, from a statewide perspective, what steps should be taken in their states to further develop a comprehensive, integrated statewide delivery system. The Letter poses seven questions recipients are to address in their planning processes and requests recipients to submit a report to LSC on or before October 1, 1998. Many

recipients have asked LSC to provide further guidance and additional information about how the state planning process will affect LSC grant decisions. Recipients have also inquired about the format for the October 1 report. This Program Letter responds to these requests.

State Planning Considerations

The attached State Planning Considerations have been developed to provide recipients and other stakeholders with more information about statewide goals, capacities and approaches recipients should consider in their planning processes. A number of other sources of information that may assist state planners and upon which these Considerations draw are referenced in the Planning Considerations. We hope these Planning Considerations will help states develop effective plans to strengthen their delivery systems and services to clients. We encourage recipients with any questions about the State Planning Considerations or planning process to contact the LSC staff member responsible for their state.

How the State Planning Process Will Affect LSC Grant Decisions

The Corporation is directed under the LSC Act to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." [2] The state planning process will provide information that helps LSC exercise this statutory responsibility.

1. Competition

a. Duration of Grants

The state planning process will provide information that helps LSC determine the duration of grants for service areas in the 1999 competition, *i.e.*, service areas that are eligible for grants of up to three years commencing January 1, 1999.

In the 1998 LSC grant competition, we determined that grants in several states that were eligible for three year funding would be made for a shorter period. The decision to award grants for a shorter period was made for two reasons: (1) To encourage recipients in these states to develop further their plans for a comprehensive, integrated statewide delivery system; and (2) concern that the configuration of LSC-funded programs in these states did not constitute the most economical and effective structure for delivering legal services to the low-income community.

As with the 1998 competition, LSC will take into account state delivery plans and configuration of programs in determining the duration of grants for service areas now being competed. Where LSC believes states need to further develop their plans for a comprehensive, integrated statewide delivery system or where LSC remains concerned about the configuration of LSC-funded service areas, grants will be made for less than three years.

b. Service Areas

1. 1999 Competition

The state planning process will not affect decisions about the number, size or configuration of service areas in competition this year.

2. 2000 and Future Competition Years

Information received through the planning process will affect future decisions regarding the most appropriate number, size and configuration of LSC-funded service areas to be competed for the year 2000 and beyond. This includes service areas that become scheduled for those years because of one or two year grant awards made in the present 1999 competition.

2. Grant Renewals

The state planning process will not affect decisions about the number, size or configuration of service areas up for renewal or the duration of grant renewals, *i.e.*, previously made multi-year awards which are now up for renewal. Decisions on renewal of these grants will continue to be based upon a showing of the renewal applicant's continued ability "to perform the duties required under the terms of its grant." [3]

Format for the October 1 Report

The attached Instructions for State Planning Reports provide information about the structure and format of the reports due at LSC on or before October 1, 1998. Please contact the LSC staff member responsible for your state if you have any questions.

Instructions for State Planning Reports

Please submit reports to the Office of Program Operations on or before October 1, 1998. Reports should be no longer than 35 pages and should contain the name and telephone number of a contact person(s). The report should:

A. Briefly describe the state planning process and participants.

B. Address the following areas in the order presented. In addressing each area, please consider LSC's State Planning Considerations and:

- Assess the strengths and weaknesses of the current approach;
- Establish goals to strengthen and expand services to eligible clients; and
- Determine the major steps and a timetable necessary to achieve those goals.

1. Intake, Advice and Referral

How are intake and delivery of advice and referral services structured within the state? What steps can be taken to ensure a delivery network that maximizes client access, efficient delivery, and high quality legal assistance?

2. Technology

Is there a state legal services technology plan? How can technological capacities be developed statewide to assure compatibility, promote efficiency, improve quality, and expand services to clients?

3. Access to the Courts, Self-Help and Preventive Education

What are the major barriers low-income persons face in gaining access to justice in the state? What efforts can be taken on a statewide basis to expand client access to the courts, provide preventive legal education and advice, and enhance self-help opportunities for low-income persons?

4. Coordination of Legal Work, Training, Information and Expert Assistance

Do program staff and pro bono attorneys throughout the state receive the training and have access to information and expert assistance necessary for the delivery of high quality legal services? How can statewide capacities be developed and strengthened to meet these needs?

5. Private Attorney Involvement

What is the current status of private attorney involvement in the state? What statewide efforts can be undertaken to increase the involvement of private attorneys in the delivery of legal services?

6. Resource Development

What statewide financial resources are available for legal services to low-income persons within the state? How can these resources be preserved and expanded?

7. System Configuration

How should the legal services programs be configured within the state to maximize the effective and economical delivery of high quality

[2] Legal Services Corporation Act, Section 1007(a)(3).

[3] 45 CFR 1634.11.

legal services to eligible clients within a comprehensive, integrated delivery system? [4]

Form C—Assurances 2001 LSC Grant Competition

If applicant is successful and receives an LSC grant or contract,

Applicant Hereby Assures and Certifies That:

1. It will comply with the Legal Services Corporation Act of 1974 as amended (LSC Act), and any applicable appropriations acts and any other applicable law, all requirements of the rules and regulations, policies, guidelines, instructions, and other directives of the Legal Services Corporation (Corporation or LSC), including the LSC *Audit Guide for Recipients and Auditors*, the *Accounting Guide*, the *CSR Instruction Handbook* and with any amendments of the foregoing adopted before or during the period of this grant. It understands that successful applicants may be expected to sign further assurances before the awarding of the grant.

2. It will not use funds received from a source other than the Legal Services Corporation for any activity inconsistent with the requirements of Public Law 106–113, Public Law 105–277, Public Law 105–119 and Public Law 104–134.

3. If the Applicant is a non-profit organization, its governing board will set specific priorities in writing, consistent with the requirements of 45 CFR Part 1620.

4. It agrees to be subject to all provisions of federal law relating to the proper use of federal funds listed in 45 CFR 1640.2(a)(1). Before the initiation of the contract, the Applicant 's employees and board members will have been informed of the federal law and its consequences as required in 45 CFR 1640.3.

5. It has the legal authority to apply for and receive a grant from the Legal Services Corporation.

6. It will provide legal services in accordance with the plans set out in its grant application, as modified in further negotiations with the Corporation, and agrees to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation or guidance issued by the Corporation.

7. It will not discriminate on the basis of race, color, religion, gender, age, disability, national origin, or any other basis prohibited by law against: (1) Any person applying for employment or employed by the Applicant; or (2) any person seeking assistance from the Applicant or other program(s) supported in whole or in part by this grant.

8. It will provide the Corporation with copies of the following policies applicable to the employees, partners, and applicants for employment funded in whole or in part under this grant: its Equal Opportunity Policy Statement, including its Complaint Review Procedure or internal means of handling employee grievances; and its Sexual Harassment Policy, including an effective complaint procedure. Each of these will have been reviewed and approved by its governing or policy board within the last three years. It will notify the Corporation prior to the implementation of changes to its Equal Opportunity Policy Statement.

9. Notwithstanding grant assurance number 10 below, and § 1006(b)(3) of the LSC Act, 42 U.S.C. 2996e(b)(3), it shall make available financial records, time records, retainer agreements, client trust fund and eligibility records, and client names, except for those reports or records subject to the attorney-client privilege, to the Corporation and any federal department or agency that is auditing or monitoring the activities of the Corporation or of the Applicant and any independent auditor or monitor receiving federal funds to conduct such auditing or monitoring, including any auditor or monitor of the Corporation.

10. It will cooperate with all reasonable and necessary information collection, including surveys, questionnaires, monitoring, audit, case statistical report (CSR) data, compliance and evaluation activities undertaken by the Corporation or its agents. During normal business hours it will give any authorized representative of the Corporation or the Comptroller General of the United States access to and copies of all original records, books, papers and documents pertaining to the grant in its possession, custody or control, except for that properly subject to the attorney-client privilege, applicable rules of professional responsibility or attorney work product which may be withheld to the extent consistent with grant assurance 9 above. Access must be provided to materials with information otherwise available in the public record (*e.g.* pleadings filed in open court) and to program financial records (*e.g.* negotiable instruments, vendor files, travel records, journals and ledgers.) It agrees to provide the Corporation with the requested materials in a form that meets the Corporation's need for information and, to the extent possible, protecting the reasonable personal privacy interests of its staff members. Should it withhold records or information on these grounds, it shall disclose the withholding and the basis therefor to LSC. LSC may require the grantee to disclose the information if LSC determines that the justification for withholding it is inadequate. In the event that records are unreasonably withheld, the Applicant will be responsible for all reasonable and necessary expenses related to LSC's efforts necessary to obtain the release of such records. It will not take any retaliatory action against any employee because of any cooperation with or release of information to LSC representatives.

11. It agrees to implement all specific record keeping requirements contained in the LSC Act, regulations, appropriations act, other applicable law, and other applicable LSC directives and to implement, as required, any additional specific record keeping requirements that may be forthcoming from the Corporation during the grant period.

12. It will give written notice to the Corporation within thirty (30) calendar days after any of the following occurrences which involve activities funded by the grant:

a. A decision to close and/or relocate any main or staffed branch office;

b. Change of Chairperson of the governing/policy body;

c. Change of chief executive officer;

d. Change in its Charter, Articles of Incorporation, By-laws or governing body structure;

e. Receipt of any notice of a claim for attorneys' fees under the provisions of § 1006(f) of the LSC Act, 42 U.S.C. § 2996e(f). The Applicant will also forward, upon receipt, a copy of the pleading requesting these attorneys' fees; or

f. Change in the Independent Public Accountant performing the grantee's annual financial audit.

13. It agrees that, prior to any merger or consolidation or other change in its current identity or status as a legal entity, it will provide the Corporation with sixty (60) days written notice. If it proposes to transfer its interests in its LSC grant to another entity pursuant to a merger or consolidation, it will seek approval from the Corporation for such transfer and will submit a Successor in Interest Agreement for approval by the Corporation.

14. In the event that the applicant ceases to be a recipient of LSC grant funds during the 2001 grant term for whatever reason,

a. It agrees to provide the Corporation with written notice at least sixty (60)

[4] States with only one LSC-funded program need not answer this question.

days before the Applicant voluntarily ceases to be a recipient of LSC grant funds during the term of this grant.

b. It will submit to the LSC, Office of Program Performance, at the time that it provides the written notice in (a) above that it is voluntarily ceasing to be a recipient of LSC grant funds or within fifteen (15) days from being notified by LSC that it will cease to be a recipient of LSC grant funds, a plan for the orderly conclusion of the role and responsibilities of the applicant as a recipient of LSC funds. The plan should describe:

1. The immediate transition planning with the new provider, particularly as related to intake, accounting of all open cases (including PAI cases) and transfer of existing cases and contracts;

2. The disposition of the recipient's fund balance, if any, pursuant to 45 CFR Part 1628. The applicant understands that the LSC fund balance amount, including any derivative income from LSC-funded activities which exceeds the 10–25 percent threshold amount pursuant to 45 CFR Section 1628.3(d), unless waived by LSC in writing, shall be returned to the Corporation;

3. An accounting of all real property purchased in whole or in part with LSC funds. The applicant understands and agrees to abide by any agreement it has with the Corporation governing the purchase of real property in whole or in part with LSC funds. The accounting should include:

i. The address and a brief description of the property and the date it was acquired;

ii. The total amount of funds expended to acquire or improve the property, including principal and interest payments, and payment for capital improvements;

iii. The total amount of LSC funds expended to acquire or improve the property, including principal and interest payments, and payment for capital improvements;

iv. The fair market value of the property;

v. A statement indicating the program's plans for disposing of the property; and

vi. Copies of any agreements or contracts governing the disposition of the property.

4. The total costs associated with cessation of LSC funding, and funds available to meet those costs, supported by a budget detailing the planned close out expenditures, and plans for securing payment or reimbursement due under contract from non-LSC sources; and

5. An accounting of all personal/non-expendable property purchased in whole or in part with LSC funds, which has a current book or market value exceeding $1,000. The accounting list should include for each item of property:

i. A brief description of the property item;

ii. The date of acquisition of the property item;

iii. The total amount of funds expended to acquire the property;

iv. The amount of LSC funds expended to acquire the property;

v. The fair market value of the property;

vi. A plan for disposing of all such property, pursuant to the 1981 Property Management Manual for LSC Programs or its duly adopted successor; and

vii. If the property is to be transferred, an assurance that the program, acquiring the property, will use the property in connection with the delivery of legal assistance to low-income persons.

c. It shall certify at the time it submits the plan in (b) above that an Independent Public Accountant will audit the recipient's 2000 financial statements, internal controls and compliance with applicable laws and regulations in accordance with the *LSC Audit Guide for Recipients and Auditors* and *Government Auditing Standards*. It shall submit to LSC's Office of the Inspector General an engagement letter from its Independent Public Accountant that includes an estimate of the LSC-funded portion of the total estimated audit cost for FY 2000 under section 509(c) of Public Law 104–134, as incorporated by Public Law 105–277 and Public Law 106–113.

d. It shall certify at the time it submits the plan in (a) above that it will submit Grant Activity Reports in a format specified by the Corporation in a timely manner;

e. It shall participate in an orderly and professional transition of functions to the new provider to deliver services in the service area; and

f. The recipient understands and agrees that, after it gives notice to LSC or after receipt of notice from LSC of the cessation of funding, the receipt of all future installments after such notice shall be contingent upon satisfactory completion of all closeout obligations imposed by the Corporation including the obligations described herein.

15. It will give telephonic notice to the LSC Office of Inspector General (OIG) within two (2) working days of the discovery of any information that indicates the Applicant may have been the victim of misappropriation, embezzlement or other theft or loss of any funds (LSC funds, non-LSC funds used for the provision of legal assistance or client funds). Such notice shall be followed by written notice by mail or facsimile within ten (10) calendar days. Written notice of a theft of any property other than funds will be provided to the OIG within ten (10) calendar days from the time of the discovery of the theft. The required notice shall be provided regardless of whether the funds or property are recovered.

16. It will notify the Corporation within twenty (20) days of any of the following arising from an LSC funded activity: a monetary judgment; sanction or penalty entered against the program for matters such as Rule 11 sanctions; malpractice judgments; EEO claims; IRS penalties; penalties arising out of the Americans with Disabilities Act; or voluntary settlement of any similar action or matter; or any other matter which may have a substantial impact on its delivery of services.

17. It understands and agrees that it will arrange for an audit and execute an agreement with its auditor that meets the requirements of LSC's *Audit Guide for Recipients and Auditors*. The Applicant also understands and agrees that if it fails to have an audit acceptable to LSC 's Office of Inspector General (OIG) in accordance with LSC's *Audit Guide for Recipients and Auditors*, the following sanctions shall be available to the Corporation as recommended by the Office of Inspector General: (1) Disallowance of the cost of the audit as a charge against LSC funds; (2) the withholding of a percentage of the recipient's funding until the audit is completed satisfactorily; and (3) the suspension of the recipient's funding until an acceptable audit is completed.

18. It shall cooperate with the Corporation in the Corporation's efforts to follow up on the reportable conditions, findings, and recommendations found by LSC, the Government Accounting Office, and/or the Applicant's independent public accountants to ensure that instances of deficiencies and noncompliance are resolved in a timely manner. Applicant management shall expeditiously resolve all such reported conditions, findings, and recommendations, including those of sub-recipients, to the satisfaction of the Corporation.

19. It understands that the LSC Office of Inspector General may remove, suspend or bar an independent public accountant, upon a showing of good cause and after notice and an opportunity to be heard.

20. It certifies that it has a computer that meets or exceeds the following specifications: Pentium/266mhz. or equivalent computer system, 64 megabytes of Random Access Memory; 4 gigabyte hard disk drive; color

monitor; Internet access; and Netscape 4.7 or Internet Explorer 5.0 browser.

The applicant certifies that it has, or will obtain, access to e-mail on each casehandler's desk *before December 2001*. The applicant further certifies that, by the same deadline, access to the World Wide Web will be available in each office that houses more than three persons. Each staff member will be appropriately trained in the use of applicable software.

21. It will submit, for each year of the grant and for each service area for which a grant is awarded, Grant Activity Reports in a format and at a time determined by the Corporation. If, during the course of the grant year, Grant Activity Reports no longer accurately reflect actual activity (*e.g.*, CSR, budget, and staffing data) of the program, it will revise and resubmit affected Grant Activity Reports to the Corporation.

22. It is aware of and agrees that an award of a multi-year grant under the competitive bidding process does not obligate LSC to disburse any funds that are not authorized or appropriated by Congress nor does it preclude the imposition of additional conditions, by LSC or the Congress, on any funds that are so disbursed. During calendar year 2001, authority for LSC to disburse some of the funds under the grant award may be rescinded by Congress, or sequestered, thereby reducing the actual amount of funds disbursed under the grant. Further, additional restrictions may be imposed on the use of funds as a result of such appropriation, authorization legislation, or other law. In subsequent years, the amount of and conditions upon funding may be changed to conform to Congressional appropriation levels and legislated restrictions. Such changes and reductions, however implemented by the Legal Services Corporation, shall not constitute a termination or suspension.

23. It will maintain during the grant period and for a period of six (6) years from the date of termination of the grant all records pertaining to the grant. With respect to financial records, it will maintain records and supporting documentation sufficient for the Corporation, or an independent auditor selected by the Corporation, to audit those records and determine whether the costs incurred and billed are reasonable, allowable and necessary under the terms of the grant. In this regard, the Applicant will permit the Corporation or its auditor to review the originals of all financial records and supporting documentation, procedures and internal control systems. Additionally, the Corporation retains the right to perform, or engage independent auditors to perform such an audit, whether during or subsequent to the grant period.

24. It shall retain closed client files for a period of not less than five (5) years.

We have read these assurances and conditions and understand that if this application is approved for funding, the grant and all funds derived therefrom will be subject to these assurances. We certify that the Applicant will comply with these assurances if the application is approved.

Name of Executive Director/(or functional equivalent)

Title

Signature

Date

Name of Governing/Policy Board Chairperson (Or other organization official authorizing this application)

Title

Signature

Date

[FR Doc. 00–13189 Filed 5–24–00; 8:45 am]

BILLING CODE 7050–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* June 23, 2000,
Time: 8:30 a.m. to 6:00 p.m.,
Room: 415,
Program: This meeting will review applications for Colleges, Universities, and Education Programs I, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

2. *Date:* June 28, 2000,
Time: 8:30 a.m. to 6:00 p.m.,
Room: 415,
Program: This meeting will review applications for Colleges, Universities, and Education Programs II, submitted to the Office of Challenge Grants at the May 1, 2000 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.

[FR Doc. 00–13102 Filed 5–24–00; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: National Assessment Synthesis Team (#5219).

Date and Time: May 31, 2000, 8:30 a.m.–5:30 p.m.; June 1, 2000, 8:30 a.m.–3:30 p.m.

Place: Renaissance Hotel, 999 Ninth Street, NW, Washington DC 20001.

Type of Meeting: Open.

Contact Person: Thomas Spence, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, VA 22230. Tel. 703–306–1502; Fax: 703–306–0372; E-mail tspence@nsf.gov. Interested persons should contact Ms. Susan Henson at the above number as soon as possible to ensure space

provisions are made for all participants and observers.

Minutes: May be obtained subsequent to the meeting from the contact person listed above.

Purpose of Meeting: To review preparation of the report the National Assessment Synthesis Team is preparing for the interagency Subcommittee on Global Change Research to report on the findings of the National Assessment of the potential consequences of climate variability and climate change for the United States.

Agenda:

Day 1 (May 31): Members will review technical comments received and will discuss revisions to report; an opportunity for public comment will be provided in late afternoon.

Day 2 (June 1): Discussion of technical comments and revisions will continue.

Reason for Late Notice: This same notice appeared in the **Federal Register** on May 18, 2000. The Committee was unaware at the time the notice was submitted that it would ultimately be published two days later than anticipated. Because this upcoming Committee meeting will result in a draft report which needs to be made available for a 60-day public comment period, as directed by Congress, it is necessary to continue the Committee's expeditious progress toward completion of its report.

Dated: May 22, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–13160 Filed 5–24–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8698]

Plateau Resources Limited

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Plateau Resources Limited to amend Source Material License SUA–1371 for the Shootaring Canyon Uranium Mill in Garfield County, Utah to authorize the receipt and disposal of Atomic Energy Act of 1954, as amended, 11e.(2) byproduct material and notice of opportunity for a hearing.

SUMMARY: In a letter dated March 22, 2000, Plateau Resources Limited (PRL) requested that the U.S. Nuclear Regulatory Commission (NRC) amend Source Material License SUA–1371 for the Shootaring Canyon Uranium Mill in Garfield County, Utah to authorize the receipt and disposal of Atomic Energy Act of 1954, as amended (AEA), 11e.(2) byproduct material. The AEA defines 11e.(2) byproduct material as "the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content." In support of its letter request, PRL enclosed a detailed report titled Supplement to Environmental Report, also dated March 22, 2000. The Supplement to Environmental Report provides the basis for the PRL request, a detailed description of the proposed action, and an environmental assessment of the impacts of the proposal to receive and dispose of off-site generated 11e.(2) byproduct material.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Weller, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555. Telephone (301) 415–7287.

SUPPLEMENTARY INFORMATION: The uranium mill at Shootaring Canyon operated for only three months in 1982, generating a small amount of mill tailings (11e.(2) byproduct material). The mill has been on standby status since that time. Currently, the impoundment at Shootaring Canyon for disposal of uranium mill tailings is filled to only about 1% of its licensed capacity and PRL proposes to use a portion of this available capacity to receive and dispose of off-site generated 11e.(2) byproduct material. PRL intends to employ the proper procedures and controls to ensure that only 11e.(2) byproduct material will be accepted for disposal.

PRL's request to amend Source Material License SUA–1371 to authorize the receipt and disposal of 11e.(2) byproduct material, including the report titled Supplement to Environmental Report, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment request under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Plateau Resources Limited, 877 North 8th West, Riverton, Wyoming 82501, Attention: Fred Craft; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR Part 2, Subpart L.

Dated at Rockville, Maryland, this 18th day of May 2000.

For the Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–13159 Filed 5–24–00; 8:45 am]

BILLING CODE 7590–01–P

UNITED STATES POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, June 5, 2000; 8:30 a.m., Tuesday, June 6, 2000.

PLACE: Philadelphia, Pennsylvania, at the Four Seasons Hotel, One Logan Square, in the North Ballroom.

STATUS: June 5 (Closed); June 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, June 5–1:00 p.m. (Closed)

1. Strategic Planning.
2. Postal Rate Commission Opinion and Recommended Decision in Docket No. C99–4, Complaint of Continuity Shippers Association.
3. eBusiness Approval Process.
4. Financial Performance.
5. Office of Inspector General Midyear Budget and Performance Results.
6. Compensation Issues.
7. Personnel Matters.

Tuesday, June 6–8:30 a.m. (Open)

1. Minutes of the Previous Meeting, May 1–2, 2000.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Cycling Team.
4. Audit Committee Charter.
5. Briefing on Information Platform.
6. Capital Investments.

a. Recognition Improvement Program.
b. Phoenix, Arizona, Priority Mail—Postal Processing Center.

7. Report on the Philadelphia Performance Cluster.
8. Tentative Agenda for the July 10–11, 2000, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: David G. Hunter, Assistant Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

David G. Hunter,

Assistant Secretary.

[FR Doc. 00–13308 Filed 5–23–00; 2:28 pm]

BILLING CODE 7710–12–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

May 1, 2000.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of May 1, 2000, of three rescission proposals and two deferrals contained in one special message for FY 2000. The message was transmitted to Congress on February 9, 2000.

Rescissions (Attachments A and C)

As of May 1, 2000, three rescission proposals totaling $128 million have been transmitted to the Congress. Attachment C shows the status of the FY 2000 rescission proposals.

Deferrals (Attachments B and D)

As of May 1, 2000, $594 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 2000.

Information From Special Message

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below:

65 FR 9017, Wednesday, February 23, 2000

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A.— STATUS OF FY 2000 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	128.0
Rejected by the Congress	
Currently before the Congress for less than 45 days	128.0

ATTACHMENT B.— STATUS OF FY 2000 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,622.0
Routine Executive releases through May 1, 2000 (OMB/Agency releases of $1,027.6 million)	−1,027.6
Overturned by the Congress	
Currently before the Congress	594.4

BILLING CODE 3110–01–P

ATTACHMENT C
Status of FY 2000 Rescission Proposals - As of May 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Defense Environmental Restoration and Waste Management..	R00-1	13,000		2-9-00	*			
Energy Programs								
SPR Petroleum Account.....	R00-2	12,000		2-9-00	*			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing								
Housing Certificate Fund.....	R00-3	103,000		2-9-00	*			
TOTAL, RESCISSIONS.....		**128,000**						

* No funds are being withheld.

ATTACHMENT D
Status of FY 2000 Deferrals - As of May 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 5-1-00
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund	D00-1	172,858		2-9-00	27,548				145,310
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund	D99-2	1,449,159		2-9-00	1,000,083				449,076
TOTAL, DEFERRALS		**1,622,017**			**1,027,631**				**594,386**

[FR Doc. 00–13123 Filed 5–24–00; 8:45 am]
BILLING CODE 3110–01–C

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42796; File No. SR–NSCC–00–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Related to General Motors Corporate Action

May 18, 2000.

Pursuant to Section 19(b)(1) cf the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 15, 2000, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow the General Motors Corporation ("GM") corporate action to be processed through NSCC's continuous net settlement ("CNS") system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GM has offered to exchange 1.065 shares of Class H common stock for each share of $1 ⅔ par value common stock up to an aggregate of 86,396,977 shares of $1 ⅔ par value common stock.[3] Under the terms of this tender offer, the treatment of a tender is dependent on the number of shares tendered and the calculation of the broker solicitation fee. Under normal circumstances, the differing treatments caused the tender offer to be ineligible for processing in CNS, and NSCC would exit the security from CNS and would issue balance orders. However, because of the size of this issue and the operational impact exiting this security from CNS would have on NSCC's participants, NSCC has filed this rule change to allow NSCC to process this corporate action in CNS. This filing and the procedures established by it will only be applicable to the voluntary GM corporate action referenced therein.[4]

For the purposes of processing this tender offer only, the following additional procedures will be followed: NSCC will process both the round-lot (shareholders of more than 100 shares) and the odd-lot (shareholders of 99 shares or less) portions of this tender offer by using both the CNS G and H reorganization subaccounts. The round-lot portion of this offer will be processed in the CNS G account and the odd-lot portion of this offer will be processed in the CNS H account. This differentiation will permit NSCC to credit long participants with positions in the H account at 100 percent and positions in the G account at the amount determined in accordance with the terms of the offer. Long participants must follow normal CNS by 6:00 p.m. on expiration plus two ("E+2"). Short participant will receive their potential liability report as usual on the morning of E+2 and will receive the liability report on the morning of E+4. NSCC notes that the total number of shares for which short participants will be liable will be based on the total number of odd lot shares plus the number of round lot shares eligible for the exchange. Submission of shares by a long participant to the G and H subaccounts constitutes a representation by such participant that the request for protection conforms to the terms of the offer.

In addition to processing the corporate action as described above, NSCC will take the following steps with respect to the broker solicitation fee. NSCC will establish positions in a "USER" CUSIP for all shares moved to CNS subaccounts G and H (long and short). These positions do not represent separate instructions for the delivery and receipt of any shares. These positions will be valued at .01 cent per share. On the same day that the positions are established, the corresponding values will be debited and credited through NSCC. Reversals of these amounts will take place through NSCC the following business day.

NSCC will issue special receive and deliver instructions naming long and short participants for positions established in the "USER" CUSIP. Each special deliver instruction issued to a short participant represents liability to the named contra participant for any solicitation fees for which such contra participant is entitled to make claim under the terms of the corporate action. All such claims will be made directly between the parties as promptly as possible and are not guaranteed by NSCC.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[5] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a 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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[6] Section

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] According to GM, this offer will expire at midnight on Friday, May 19, 2000, unless extended, and the tender offer will have a three day protect that will expire on May 24, 2000, unless extended.

[4] For a detailed description of NSCC procedures for the GM voluntary reorganization, refer to NSCC Important Notice dated May 12, 2000, a copy of which is attached to NSCC's filing as Exhibit A. NSCC's filing is available through the Commission's Public Reference Section or through NSCC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(F).

17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. Allowing this corporate action to be processed in the CNS system should help ensure the tenders processed through NSCC will be promptly and accurately cleared and settled.

NSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will allow NSCC to process this corporate action in the CNS system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–00–06 and should be submitted by June 15, 2000.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR–NSCC–00–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–13148 Filed 5–24–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, August 6, 2000, from 10 a.m. to 4 p.m. at the Double Tree Hotel, Portland, Maine to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U. S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416. Telephone number (202) 205–6817.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 00–13094 Filed 5–24–00; 8:45 am]

BILLING CODE 8025–01–U]

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District; Jacksonville, Florida; Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 2 p.m. to 3 p.m., June 15, 2000, at the Caribe Royale Resort, 14300 International Drive, Orlando, Florida, in conjunction with the SBA Florida State Lenders' Conference, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present. For further information, write or call Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100-B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–13093 Filed 5–24–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice 3317]

Civic Education Curriculum Development and Teacher Training Program for Romania

NOTICE: Request for Proposals.

SUMMARY: The Humphrey Fellowships and Institutional Linkages Branch of the Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Civic Education Curriculum Development and Teacher Training Project for Romania. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501c may submit proposals to cooperate with the Bureau in the administration of a two-year project to support the development and implementation of new curriculum units for an eleventh grade civic education and comparative government course in Romania. The grant will award up to $194,000 to facilitate the project. The U.S. organization will work in coordination with the Ministry of Education and its appointees in Romania; the public affairs section of the U.S. Embassy in Bucharest; and an advisory group of Romanian civic educators. The program will comprise two phases of activity: (1) Selection of an eight-member curriculum development team of Romanian educators and preliminary consultations in Bucharest; (2) an eight- to ten-week U.S.-based curriculum development workshop in which the team will produce draft curriculum units and a teacher's manual for an eleventh-grade comparative government course.

In addition to the activity described in this solicitation, additional program activities may be undertaken during a third phase. Contingent upon successful completion of Phases I and II, the grantee may be invited to continue program activities with additional funding that may be provided by the Bureau. These activities would include follow-up consultations in Romania to assist in the further development, review, and field-testing of the draft curricular materials and in the training of a larger group of Romanian practitioners in their utilization.

The Bureau solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. Grantee organizations will consult regularly with the Bureau and with the public affairs section at the U.S. Embassy in Bucharest with regard to participant selection, program implementation, direction, and assessment. Proposals should demonstrate an understanding of the issues confronting education in Romania as well as expertise in civic education, political science, and curriculum development. The Bureau encourages applicants who can draw on the contributions of political scientists to civic education and comparative government curricula in the United

States while adapting this experience to address Romanian educational needs.

The funding authority for the program cited above is provided through the Support for East European Democracy (SEED) Act. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. The programs and projects of the Bureau of Educational and Cultural Affairs are subject to availability of funds.

Program Information

Overview: The goals of the project are to assist a team of Romanian educators to develop up-to-date curriculum units for a course in civic education and comparative government to be taught at the eleventh grade level, and to assist in training teachers to use these units in Romanian classrooms. The rationale for this project is that improving citizenship education at the high school level will better prepare Romanian students to participate actively in building a pluralistic, democratic society and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents while training teachers to assist in supporting these relationships. Applicants may suggest topics to be developed by the curriculum team; however, final determination of appropriate topics will be made by the curriculum development team in cooperation with the grantee organization and an advisory group of local curriculum development specialists in Romania during the first phase of the project.

Guidelines

Program Planning and Implementation

Grants should begin on or around September 1, 2000, with Phase I of the project, in which a curriculum development team of eight practitioners (*e.g.*, classroom teachers and curriculum specialists) will be chosen by a selection committee in Romania comprised of local civic education specialists, representatives of the U.S. grantee organization, and the public affairs section of the U.S. Embassy in Bucharest. A Ministry of Education official will be invited to provide liaison between the U.S. project director(s) and the Romanian government. In Phase I, the team will undertake preliminary work in Romania over a period of 3–6 months. Members of the curriculum development team, in consultation with specialists from the grantee organization and local Romanian civic education and political science specialists, will familiarize themselves with civic education curricula and teaching materials used in Romania, with materials used in the U.S. and with the needs of students in Romania, in order to select the topics to be covered in the curriculum units that will be drafted.

In Phase II, members of the curriculum development team will spend approximately eight to ten weeks in a highly structured U.S.-based workshop to be sponsored and organized by the U.S. grantee organization, and will attend focused curriculum seminars; observe relevant aspects of the U.S. educational system; and begin drafting teacher and student materials for the curriculum units in consultation with U.S. specialists. The grantee organization will be responsible for introducing the Romanian team to leading U.S. political science practitioners and civic educators with expertise that is pertinent to the topics to be explored, and to a broad range of relevant resources. The team should be familiarized with methods for effectively utilizing civic education and political science resources from various levels in a classroom setting. The workshop schedule should incorporate significant time for both individual and group work on drafting materials as well as intensive training on specific approaches to the teaching, development, and revision of civic education and comparative government topics. In addition, the workshop should include field experiences which are relevant to the materials being produced (such as visits to schools, matching the Romanian educators with U.S. teachers, and mentored attendance at professional association meetings). The grantee organization will cooperate with the curriculum development team, Romanian educators, and the Ministry of Education in Romania to design a pilot-test program for selected schools in Romania.

Possible future activities include work by the curriculum development team in centers throughout Romania with teacher trainers, local civic education specialists, political science specialists from Romanian universities, U.S. specialists from the grantee organization, and other Romanian specialists to provide introductory training for a larger group of practitioners in methods for testing and utilizing the draft curriculum units in civic education/comparative government classrooms. Revision of the draft curricular materials based on the results of field testing may be completed by the grantee organization and the Romanian curriculum development team during future phases of activity.

During these phases the Romanian Ministry of Education will provide the following assistance to the participants:

(1) Provide a contract for paid leave time for the curriculum development team during their stays in the U.S. and the subsequent in-service training work;

(2) Facilitate the logistics of in-service training sessions for teachers by providing appropriate space at regional teacher training centers (Casa Corpului Didactic).

Visa/Insurance/Tax Requirements

U.S. lecturers and consultants participating in the project must be U.S. citizens. Programs must comply with J–1 visa regulations. Please refer to Program Specific Guidelines POGI) in the Solicitation Package for further information. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $194,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and detailed program and administrative budgets should be accompanied by a narrative which provides a brief rationale for each line item. The total administrative costs funded by the Bureau must be limited and reasonable.

Allowable costs for the program include the following:

(1) Administrative Costs, including salaries and benefits, of grantee organization.

(2) Program Costs, including general program costs and program costs for each Romanian participant in the U.S.-based curriculum development seminar.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number

All correspondence with the Bureau concerning this RFP should reference

the above title and number ECA/A/S/U–00–11.

FOR FURTHER INFORMATION, CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, ECA/A/S/U, Room 349, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, telephone 202 619–5289 and fax 202 401–1433, or hiemstra@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Paul Hiemstra on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, June 23, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–00–11, Office of Grants Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the public affairs section at the U.S. Embassy in Bucharest for its review, with the goal of reducing the time it takes to get Embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, 'the Bureau' shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the U.S. Department of State Office of East European Assistance, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Department of State, Office of the Legal Adviser or by other Bureau elements. Final funding decisions are at the discretion of the Department of State Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in civic education, political science, and comparative government course development.

2. Creativity and feasibility of program plan: A detailed agenda and relevant work plan should demonstrate substantive undertakings, logistical capacity, and a creative utilization of resources and relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and guidelines described in this solicitation.

3. Ability to achieve program objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Broad significance and long-term impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Project objectives should have significant but realistically anticipated on-going consequences for the participants and for their surrounding societies and communities as well as for the growth and encouragement of freedom and democracy, and cooperation.

5. Support of diversity: Proposals should demonstrate substantive support

of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Romania and strategies for addressing these needs as relevant to achieve program goals.

6. Institutional capacity and record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the grants staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project evaluation: Proposals should include a plan to evaluate the project's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit intermediate program and financial reports after each project component is concluded or quarterly, whichever is less frequent.

8. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate and should reflect a commitment to pursuing project objectives. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries* * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Support for East European Democracy (SEED) Act.

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Department of State procedures.

Dated: May 16, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–12939 Filed 5–24–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice #3312]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Fire Protection; Notice of Meeting

The U.S. Safety of Life at Sea (SOLAS) Working Group on Fire Protection will conduct an open meeting on Tuesday, June 13, 2000, at 9:30 AM, in room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593. The purpose of the meeting will be to discuss the outcome of the Forty-fourth Session of the International Maritime Organization's Subcommittee on Fire Protection, held February 21–25, 2000. In addition, preparations for the next session will also be discussed at the meeting.

The meeting will focus on proposed amendments to the 1974 SOLAS Convention for the fire safety of commercial vessels. Specific discussion areas include: comprehensive review of SOLAS Chapter II–2, unified interpretations to SOLAS II–2 and related fire test procedures, recommendations on evacuation analysis for passenger ships and high-speed passenger craft, fire test procedures for fire retardant materials used in the construction of lifeboats, and use of perfluorocarbons in shipboard fire-extinguishing systems.

Although the meeting will focus primarily on the outcome of the previous session, preparations and plans for the next session will also be discussed. This offers the opportunity for members of the public to be involved early in the standards development process. Members of the public wishing to make a statement on new issues or proposals at the meeting are requested to submit a brief summary to the U. S. Coast Guard five days prior to the meeting.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may obtain more information regarding the meeting of the SOLAS Working Group on Fire Protection by writing: Office of Design and Engineering Standards, Commandant (G–MSE–4), U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593, by calling: LCDR Kevin Kiefer at (202) 267–1444, or by visiting the following World Wide Website: http://www.uscg.mil/hq/g-m/mse4/stdimofp.htm.

Dated: May 17, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, U.S. Department of State.

[FR Doc. 00–13193 Filed 5–24–00; 8:45 am]

BILLING CODE 4710–07–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice of Review Timetable and Pubic Hearings Regarding Additional Product Designation for Beneficiaries of the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice lists products that the Trade Policy Staff Committee (TPSC) will be reviewing for possible duty-free importation from certain sub-Saharan African countries as provided under the African Growth and Opportunity Act (AGOA), which Congress recently enacted. The notice provides the dates and places the TPSC will hold public hearings on this subject, explains how to make written comments on products included in the

list, and provides the deadline for these submissions.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. Telephone: (202) 395–6971.

SUPPLEMENTARY INFORMATION: Congress established the Generalized System of Preferences (GSP) program in Title V of the Trade Act of 1974, as amended ("Trade Act") (19 U.S.C. 2461 *et seq.*). Under the GSP program, the President may exempt certain products of designated developing countries from import duties. The President implemented the program by Executive Order 11888 of November 24, 1975, and has modified it through later Executive Orders and Presidential Proclamations.

On May 18, 2000, the President signed into law the Trade and Development Act of 2000, which includes the AGOA. The AGOA amends the GSP program, authorizing the President to provide GSP (duty-free) treatment for selected products from designated sub-Saharan African countries if, after receiving advice from the U.S. International Trade Commission, he determines that the products are not import-sensitive in the context of imports from these countries. The AGOA names those countries whose products the President may designate for duty-free importation.

I. TPSC Review of Products To Be Selected for Duty-Free Treatment

This notice lists by Harmonized Tariff System numbers those products not currently receiving GSP treatment that the Congress determined are eligible for designation under the AGOA for such treatment when imported from sub-Saharan African countries. The TPSC's GSP Subcommittee will review this list, after holding hearings and receiving written comments from the public and advice from the International Trade Commission, to decide which of the products the TPSC will recommend to the President for GSP treatment if imported from countries designated as AGOA beneficiaries.

Listing the products proposed for GSP eligibility does not indicate any opinion about the merits of granting eligibility for these products. Placement on the list indicates only that the products have been found eligible for review by the GSP Subcommittee and the TPSC, and that such review will take place.

The GSP Subcommittee of the TPSC invites submissions supporting or opposing the granting of GSP eligibility for any article on the attached list. All such submissions should include an original and thirteen (13) copies in English and conform to 15 CFR 2007, particularly 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3). All submissions should identify the subject article(s) in terms of the current HTS nomenclature and should be provided by 5 p.m., July 5, 2000.

All communications about public comments should be addressed to: Chairman of the GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. Telephone number: (202) 395–6971. Questions may be directed to any staff member of the GSP Information Center. Public versions of all documents relating to this review will be available for inspection by appointment in the USTR public reading room. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

Submissions that are granted "business confidential" status pursuant to 15 CFR 2203.6, and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7, will not be available for public inspection. If a document contains such business confidential information, an original and thirteen (13) copies of the business confidential versions of the document along with an original and thirteen (13) copies of the non-confidential version must be submitted. The document that contains business confidential information should be clearly marked "business confidential" at the top and bottom of each page. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "nonconfidential").

II. Requests To Participate in the Public Hearings

The GSP Subcommittee will hold hearings on September 7, 2000 and, if needed, on September 8, 2000 beginning at 10 a.m. in the Truman Room of the White House Conference Center, 726 Jackson Place, NW., Washington, DC. The hearings will be open to the public, and a transcript of the hearings will be available for public inspection or it can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit the name, address, telephone number, and fax number of the witness or witnesses representing their organization to the Chairman of the GSP Subcommittee by 5 p.m. August 9, 2000 as well as an original and thirteen (13) copies (in English) or all written briefs or statements. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in the briefs or statements submitted for the record.

If, by the close of business on August 9, 2000 no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the GSP Information Office (202) 395–6971 after August 9, 2000 to determine whether a hearing will be held.

Post-hearing and rebuttal written briefs or statements will be accepted if they conform with the regulations cited above and if an original and thirteen (13) copies in English are submitted no later than 5 p.m. September 27, 2000. Parties not wishing to appear at the public hearings may submit pre-hearing written briefs or statements by August 9, 2000, and may submit post-hearing and rebuttal written briefs or statements by September 27, 2000. Comments by interested persons on the USITC Report prepared as part of this product review should be submitted as an original and thirteen (13) copies, in English, by 5 p.m. October 20, 2000.

On behalf of the President and in accordance with section 111 of AGOA (Section 506A of the Trade Act), on May 22, 2000 the list of products proposed for duty-free treatment eligibility under the GSP was furnished to the U.S. International Trade Commission (USITC) to secure its advice on (1) the probable economic effect of the elimination of U.S. import duties under GSP on U.S. industries producing like or directly competitive products, and on consumers; and (2) to the extent possible, the level of U.S. sensitivity to imports of such Sub-Saharan products.

Announcement of Products To Be Accepted for Designation as Eligible Articles for GSP Purposes When Imported Only From the Beneficiaries of the African Growth and Opportunity Act

The AGOA authorizes the President to provide GSP (duty-free) treatment for selected products from designated sub-Saharan African countries if, after receiving advice from the U.S. International Trade Commission, he determines that the products are not import-sensitive in the context of imports from these countries. The list of products designated as eligible for duty-free treatment under the GSP as a result

of the review will be announced this winter.

H. John Rosenbaum,

Assistant U.S. Trade Representative for Trade and Development.

Attachment: List of HTS Numbers of the Products Proposed for Duty-Free Treatment Eligibility Under GSP

BILLING CODE 3901–01–M

Annex

HTS Subheadings

0101.20.20	0207.13.00	0403.90.37	0406.20.61	0406.90.44
0101.20.40	0207.14.00	0403.90.41	0406.20.65	0406.90.46
0102.90.40	0207.24.00	0403.90.47	0406.20.69	0406.90.49
0104.20.00	0207.25.20	0403.90.51	0406.20.73	0406.90.51
0105.11.00	0207.25.40	0403.90.57	0406.20.77	0406.90.52
0105.12.00	0207.26.00	0403.90.61	0406.20.81	0406.90.59
0105.19.00	0207.27.00	0403.90.72	0406.20.85	0406.90.61
0105.92.00	0207.32.00	0403.90.74	0406.20.89	0406.90.63
0105.93.00	0207.34.00	0403.90.85	0406.20.95	0406.90.66
0105.99.00	0207.35.00	0403.90.87	0406.30.12	0406.90.72
0106.00.30	0207.36.00	0403.90.90	0406.30.14	0406.90.76
0201.10.05	0208.10.00	0404.10.08	0406.30.22	0406.90.82
0201.10.10	0208.90.40	0404.10.11	0406.30.24	0406.90.86
0201.20.02	0210.11.00	0404.10.20	0406.30.32	0406.90.90
0201.20.04	0210.19.00	0404.10.48	0406.30.34	0406.90.93
0201.20.06	0305.30.20	0404.10.50	0406.30.42	0406.90.95
0201.20.10	0305.30.40	0404.90.28	0406.30.44	0406.90.99
0201.20.30	0305.41.00	0404.90.30	0406.30.49	0408.11.00
0201.20.50	0305.61.20	0404.90.70	0406.30.51	0408.19.00
0201.30.02	0305.69.20	0405.10.05	0406.30.55	0408.91.00
0201.30.04	0305.69.40	0405.10.10	0406.30.56	0408.99.00
0201.30.06	0401.10.00	0405.20.10	0406.30.57	0409.00.00
0201.30.10	0401.20.20	0405.20.20	0406.30.61	0509.00.00
0201.30.30	0401.30.02	0405.20.40	0406.30.65	0601.10.30
0201.30.50	0401.30.05	0405.20.50	0406.30.69	0601.10.85
0202.10.05	0401.30.42	0405.20.60	0406.30.73	0601.20.10
0202.10.10	0401.30.50	0405.90.05	0406.30.77	0602.90.50
0202.20.02	0402.10.05	0405.90.10	0406.30.81	0603.10.60
0202.20.04	0402.10.10	0406.10.12	0406.30.85	0701.10.00
0202.20.06	0402.21.02	0406.10.14	0406.30.89	0701.90.50
0202.20.10	0402.21.05	0406.10.24	0406.30.95	0702.00.20
0202.20.30	0402.21.27	0406.10.34	0406.40.20	0702.00.40
0202.20.50	0402.21.30	0406.10.44	0406.40.40	0703.90.00
0202.30.04	0402.21.73	0406.10.54	0406.40.51	0704.90.40
0202.30.06	0402.21.75	0406.10.64	0406.40.52	0706.10.05
0202.30.30	0402.29.05	0406.10.74	0406.40.54	0706.10.20
0202.30.50	0402.29.10	0406.10.84	0406.40.58	0706.90.40
0203.12.10	0402.91.03	0406.10.95	0406.90.05	0707.00.50
0203.19.20	0402.91.06	0406.20.10	0406.90.06	0708.20.90
0204.10.00	0402.91.10	0406.20.22	0406.90.08	0708.90.40
0204.21.00	0402.91.30	0406.20.24	0406.90.14	0709.20.90
0204.22.20	0402.99.03	0406.20.29	0406.90.16	0709.40.20
0204.22.40	0402.99.06	0406.20.31	0406.90.20	0709.40.60
0204.23.20	0402.99.10	0406.20.34	0406.90.25	0709.51.00
0204.23.40	0402.99.30	0406.20.36	0406.90.28	0709.70.00
0204.30.00	0402.99.68	0406.20.43	0406.90.31	0709.90.30
0204.41.00	0402.99.70	0406.20.44	0406.90.33	0709.90.35
0204.42.20	0403.10.05	0406.20.49	0406.90.34	0709.90.45
0204.42.40	0403.10.10	0406.20.51	0406.90.36	0709.90.90
0204.43.20	0403.10.90	0406.20.54	0406.90.38	0710.10.00
0204.43.40	0403.90.02	0406.20.55	0406.90.39	0710.22.37
0207.11.00	0403.90.04	0406.20.56	0406.90.41	0710.22.40
0207.12.00	0403.90.20	0406.20.57	0406.90.43	0710.29.40

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0710.30.00	0811.90.80	1212.91.00	1702.19.00	2007.10.00
0710.40.00	0812.10.00	1214.10.00	1702.50.00	2007.91.10
0710.80.20	0812.20.00	1302.13.00	1704.90.10	2007.99.15
0710.80.40	0812.90.10	1302.39.00	1704.90.52	2007.99.35
0710.80.45	0812.90.20	1401.90.20	1704.90.54	2007.99.55
0710.80.60	0812.90.30	1402.90.10	1704.90.74	2007.99.60
0710.80.85	0812.90.40	1403.10.00	1704.90.90	2007.99.65
0710.80.97	0812.90.90	1501.00.00	1806.20.79	2007.99.70
0710.90.90	0813.20.10	1502.00.00	1806.20.81	2008.11.22
0711.20.38	0813.20.20	1503.00.00	1806.20.85	2008.11.25
0711.20.40	0813.40.15	1504.10.40	1806.20.95	2008.11.42
0711.90.40	0813.40.30	1507.10.00	1806.20.99	2008.11.45
0712.20.20	0813.40.40	1507.90.40	1901.10.05	2008.19.20
0712.20.40	0813.40.90	1508.10.00	1901.10.15	2008.19.40
0712.30.20	0813.50.00	1508.90.00	1901.10.35	2008.19.50
0712.90.20	0814.00.80	1512.11.00	1901.10.45	2008.19.85
0712.90.40	0901.90.20	1512.19.00	1901.10.55	2008.20.00
0712.90.78	0904.20.40	1512.21.00	1901.10.60	2008.30.20
0714.90.40	0910.40.40	1512.29.00	1901.10.80	2008.30.30
0802.11.00	1001.10.00	1514.10.90	1901.10.95	2008.30.35
0802.12.00	1001.90.10	1514.90.50	1901.90.10	2008.30.40
0802.21.00	1001.90.20	1514.90.90	1901.90.20	2008.30.46
0802.22.00	1003.00.20	1515.11.00	1901.90.32	2008.30.55
0802.32.00	1003.00.40	1515.19.00	1901.90.33	2008.30.65
0802.90.10	1006.10.00	1515.21.00	1901.90.34	2008.30.70
0802.90.98	1006.20.20	1515.29.00	1901.90.38	2008.30.80
0804.10.20	1006.20.40	1516.20.10	1901.90.42	2008.30.85
0804.10.40	1006.30.90	1516.20.90	1901.90.44	2008.40.00
0804.10.60	1006.40.00	1517.10.00	1901.90.46	2008.50.40
0804.10.80	1008.20.00	1517.90.45	1901.90.48	2008.60.00
0804.20.40	1008.90.00	1517.90.50	1901.90.56	2008.70.00
0804.20.80	1101.00.00	1517.90.90	1901.90.70	2008.80.00
0804.30.20	1102.10.00	1518.00.20	1903.00.40	2008.92.10
0804.30.40	1103.11.00	1522.00.00	1904.20.10	2008.92.90
0804.30.60	1103.19.00	1602.10.00	1904.20.90	2008.99.05
0804.40.00	1104.11.00	1602.20.20	2001.90.20	2008.99.10
0805.10.00	1104.19.00	1602.41.90	2001.90.35	2008.99.18
0805.20.00	1104.21.00	1602.42.40	2001.90.60	2008.99.25
0805.30.20	1105.20.00	1602.50.60	2002.10.00	2008.99.29
0805.40.40	1107.10.00	1603.00.10	2002.90.80	2008.99.42
0805.40.60	1107.20.00	1604.11.20	2003.10.00	2008.99.60
0805.40.80	1108.13.00	1604.12.20	2004.10.80	2009.11.00
0806.10.20	1202.10.05	1604.13.20	2004.90.90	2009.19.25
0806.10.60	1202.10.40	1604.13.30	2005.51.20	2009.19.45
0806.20.10	1202.20.05	1604.14.10	2005.60.00	2009.20.20
0806.20.20	1202.20.40	1604.14.20	2005.70.50	2009.20.40
0806.20.90	1204.00.00	1604.14.30	2005.70.60	2009.30.40
0807.11.40	1205.00.00	1604.14.40	2005.70.70	2009.30.60
0807.19.10	1207.20.00	1604.14.70	2005.70.91	2009.40.20
0807.19.80	1208.10.00	1604.14.80	2005.70.97	2009.40.40
0808.20.40	1208.90.00	1604.19.10	2005.90.30	2009.60.00
0809.10.00	1209.22.20	1604.19.40	2005.90.50	2009.80.40
0809.30.20	1209.24.00	1604.19.50	2005.90.80	2009.90.40
0809.40.40	1209.25.00	1604.20.40	2006.00.20	2101.30.00
0810.20.10	1209.91.10	1604.20.50	2006.00.40	2103.20.40
0811.90.22	1209.91.50	1605.90.50	2006.00.50	2105.00.05
0811.90.40	1212.30.00	1702.11.00	2006.00.60	2105.00.10

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2105.00.25	2401.30.27	2904.10.15	2914.69.20	2921.30.30
2105.00.30	2401.30.35	2904.10.32	2914.69.90	2921.41.10
2105.00.50	2401.30.37	2904.10.37	2914.70.40	2921.41.20
2106.90.22	2402.10.30	2904.10.50	2915.39.30	2921.42.10
2106.90.24	2402.10.60	2904.20.10	2915.39.35	2921.42.18
2106.90.28	2402.20.80	2904.20.15	2915.40.20	2921.42.22
2106.90.32	2402.90.00	2904.20.35	2915.40.30	2921.42.65
2106.90.34	2403.10.20	2904.20.40	2915.90.18	2921.42.90
2106.90.38	2403.10.30	2904.20.45	2916.11.00	2921.43.08
2106.90.48	2403.10.60	2904.90.08	2916.13.00	2921.43.15
2106.90.62	2403.91.43	2904.90.20	2916.15.10	2921.43.40
2106.90.64	2403.91.45	2904.90.30	2916.19.30	2921.43.80
2106.90.78	2403.99.20	2904.90.40	2916.31.30	2921.44.10
2106.90.83	2403.99.30	2904.90.47	2916.31.50	2921.44.20
2106.90.85	2403.99.60	2905.17.00	2916.32.10	2921.44.70
2106.90.95	2613.10.00	2906.12.00	2916.32.20	2921.45.10
2202.90.10	2613.90.00	2906.21.00	2916.34.10	2921.45.20
2202.90.22	2616.10.00	2906.29.60	2916.34.25	2921.45.60
2202.90.24	2616.90.00	2907.13.00	2916.34.55	2921.45.90
2202.90.30	2709.00.10	2907.15.60	2916.35.25	2921.49.10
2202.90.35	2709.00.20	2907.19.10	2916.35.55	2921.49.37
2204.21.20	2710.00.05	2907.19.20	2916.39.03	2921.49.43
2204.21.50	2710.00.10	2907.19.80	2916.39.45	2921.49.45
2204.29.20	2710.00.15	2907.21.00	2916.39.75	2921.49.50
2204.29.40	2710.00.18	2907.22.50	2917.12.10	2921.51.10
2204.29.60	2710.00.20	2907.29.90	2917.12.50	2921.51.30
2204.29.80	2710.00.25	2907.30.00	2917.19.20	2921.51.50
2204.30.00	2710.00.30	2908.10.10	2917.19.27	2921.59.08
2205.90.40	2710.00.45	2908.10.25	2917.19.40	2921.59.30
2206.00.30	2710.00.60	2908.10.35	2917.20.00	2921.59.40
2206.00.60	2801.30.20	2908.10.60	2917.36.00	2921.59.80
2207.10.60	2804.69.50	2908.20.04	2917.39.04	2922.19.18
2207.20.00	2805.11.00	2908.20.20	2917.39.15	2922.19.20
2208.40.20	2805.19.00	2908.20.60	2917.39.17	2922.19.60
2208.40.40	2805.21.00	2908.90.08	2917.39.30	2922.19.70
2208.40.60	2805.30.00	2908.90.28	2917.39.70	2922.21.10
2208.40.80	2825.90.30	2908.90.40	2918.17.50	2922.21.40
2302.50.00	2827.39.40	2908.90.50	2918.19.10	2922.21.50
2303.10.00	2841.80.00	2909.30.05	2918.19.20	2922.22.10
2304.00.00	2842.10.00	2909.30.07	2918.19.30	2922.22.20
2306.10.00	2843.10.00	2909.30.09	2918.19.90	2922.22.50
2308.10.00	2844.10.50	2909.30.40	2918.23.30	2922.29.10
2308.90.80	2849.90.30	2909.30.60	2918.23.50	2922.29.15
2309.90.22	2850.00.10	2909.49.10	2918.29.04	2922.29.27
2309.90.24	2902.90.30	2909.49.15	2918.29.20	2922.29.60
2309.90.42	2902.90.90	2909.50.10	2918.29.65	2922.29.80
2309.90.44	2903.30.05	2909.50.45	2918.29.75	2922.30.10
2309.90.60	2903.59.05	2909.50.50	2918.30.10	2922.30.25
2309.90.95	2903.59.15	2909.60.10	2918.30.25	2922.30.45
2401.10.61	2903.59.20	2909.60.20	2918.30.30	2922.42.10
2401.10.63	2903.61.20	2910.90.20	2918.90.05	2922.43.10
2401.20.05	2903.62.00	2912.21.00	2918.90.43	2922.43.50
2401.20.31	2903.69.10	2912.30.10	2918.90.47	2922.49.10
2401.20.33	2903.69.20	2913.00.40	2919.00.30	2922.49.27
2401.20.83	2903.69.27	2914.11.10	2920.90.20	2922.49.30
2401.20.85	2903.69.70	2914.40.40	2921.22.10	2922.49.37
2401.30.25	2904.10.10	2914.50.30	2921.30.10	2922.50.10

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2922.50.14	2933.29.10	2942.00.10	3805.90.00	3926.90.77
2922.50.17	2933.29.35	2942.00.35	3806.90.00	3926.90.85
2922.50.25	2933.29.43	3202.10.50	3808.10.50	4010.12.90
2922.50.35	2933.32.10	3204.11.10	3808.20.50	4010.19.80
2922.50.40	2933.32.50	3204.11.15	3808.30.50	4010.21.30
2924.10.80	2933.39.20	3204.11.35	3808.90.95	4010.22.30
2924.21.20	2933.39.30	3204.11.50	3809.92.10	4010.23.50
2924.21.45	2933.39.41	3204.12.17	3809.92.50	4010.24.50
2924.22.00	2933.39.61	3204.13.10	3809.93.10	4010.29.10
2924.29.05	2933.39.91	3204.13.20	3809.93.50	4010.29.50
2924.29.20	2933.40.15	3204.13.25	3810.10.00	4015.19.50
2924.29.31	2933.40.20	3204.13.60	3810.90.10	4015.90.00
2924.29.70	2933.40.26	3204.13.80	3810.90.50	4104.10.60
2924.29.75	2933.40.60	3204.14.10	3811.19.00	4104.10.80
2925.19.10	2933.40.70	3204.14.20	3811.21.00	4105.12.00
2925.19.40	2933.51.90	3204.14.25	3811.29.00	4105.19.10
2925.20.10	2933.59.21	3204.14.30	3811.90.00	4105.19.20
2925.20.20	2933.59.22	3204.14.50	3812.10.50	4105.20.30
2925.20.60	2933.59.36	3204.15.10	3812.20.50	4107.10.20
2926.90.05	2933.59.45	3204.15.20	3812.30.90	4107.10.30
2926.90.12	2933.59.53	3204.15.30	3814.00.10	4107.90.30
2926.90.44	2933.59.70	3204.15.35	3814.00.50	4109.00.30
2926.90.47	2933.59.80	3204.15.40	3815.90.50	4109.00.40
2927.00.06	2933.79.09	3204.15.80	3817.10.10	4202.11.00
2927.00.40	2933.79.15	3204.16.10	3817.20.00	4202.12.20
2927.00.50	2933.90.13	3204.16.20	3819.00.00	4202.19.00
2928.00.25	2933.90.26	3204.16.30	3820.00.00	4202.21.30
2929.10.10	2933.90.46	3204.16.50	3821.00.00	4202.21.60
2929.10.20	2933.90.53	3204.17.04	3823.13.00	4202.21.90
2929.10.35	2933.90.61	3204.17.20	3823.19.40	4202.22.15
2929.10.55	2933.90.65	3204.17.60	3823.70.20	4202.22.70
2929.10.80	2933.90.70	3204.17.90	3823.70.40	4202.29.50
2929.90.15	2933.90.75	3204.19.11	3823.70.60	4202.29.90
2929.90.20	2933.90.79	3204.19.20	3824.10.00	4202.31.60
2930.20.20	2933.90.82	3204.19.25	3824.40.10	4202.32.85
2930.90.29	2934.10.10	3204.19.30	3824.40.50	4202.39.50
2930.90.49	2934.10.20	3204.19.40	3824.71.00	4202.91.00
2931.00.10	2934.20.20	3204.19.50	3824.79.00	4202.92.45
2931.00.15	2934.20.30	3205.00.40	3824.90.35	4202.99.50
2931.00.22	2934.20.40	3205.00.50	3824.90.45	4202.99.90
2931.00.27	2934.20.80	3206.49.20	3824.90.47	4203.10.40
2931.00.30	2934.30.12	3206.50.00	3824.90.90	4203.29.05
2931.00.60	2934.30.23	3207.40.50	3912.20.00	4203.29.08
2932.19.10	2934.30.27	3211.00.00	3916.90.30	4203.29.15
2932.29.20	2934.30.43	3214.90.50	3918.10.32	4203.29.18
2932.29.30	2934.30.50	3301.13.00	3918.10.40	4203.29.20
2932.29.45	2934.90.05	3403.11.20	3918.90.20	4203.29.30
2932.91.00	2934.90.06	3403.19.10	3918.90.30	4203.29.40
2932.92.00	2934.90.39	3403.91.50	3921.13.19	4203.29.50
2932.93.00	2934.90.44	3403.99.00	3921.90.19	4304.00.00
2932.99.35	2935.00.10	3502.11.00	3921.90.21	4405.00.00
2932.99.39	2935.00.15	3502.19.00	3921.90.29	4409.10.65
2932.99.60	2935.00.48	3503.00.20	3926.20.40	4409.20.65
2932.99.70	2935.00.60	3503.00.40	3926.30.50	4412.19.50
2933.19.08	2935.00.75	3506.10.10	3926.90.55	4421.10.00
2933.19.37	2935.00.95	3606.90.30	3926.90.59	4421.90.20
2933.19.43	2942.00.05	3804.00.50	3926.90.65	4421.90.40

4421.90.80	6403.99.20	7013.10.50	7208.25.30	7212.10.00
4421.90.85	6403.99.40	7013.21.10	7208.25.60	7212.20.00
4601.99.00	6403.99.60	7013.21.20	7208.26.00	7212.30.10
4602.10.21	6403.99.75	7013.21.30	7208.27.00	7212.30.30
4602.10.22	6403.99.90	7013.29.05	7208.36.00	7212.30.50
4602.10.25	6404.11.20	7013.29.10	7208.37.00	7212.40.10
4602.10.29	6404.11.40	7013.29.20	7208.38.00	7212.40.50
6401.10.00	6404.11.50	7013.29.30	7208.39.00	7212.50.00
6401.91.00	6404.11.60	7013.29.40	7208.40.30	7212.60.00
6401.92.60	6404.11.70	7013.29.50	7208.40.60	7213.10.00
6401.92.90	6404.11.80	7013.29.60	7208.51.00	7213.20.00
6401.99.30	6404.11.90	7013.31.10	7208.52.00	7213.91.30
6401.99.60	6404.19.15	7013.31.20	7208.53.00	7213.91.45
6401.99.90	6404.19.20	7013.32.10	7208.54.00	7213.91.60
6402.19.05	6404.19.25	7013.32.20	7208.90.00	7213.99.00
6402.19.15	6404.19.30	7013.32.30	7209.15.00	7214.10.00
6402.19.50	6404.19.35	7013.32.40	7209.16.00	7214.20.00
6402.19.70	6404.19.40	7013.39.10	7209.17.00	7214.30.00
6402.19.90	6404.19.50	7013.39.20	7209.18.15	7214.91.00
6402.30.30	6404.19.60	7013.39.30	7209.18.25	7214.99.00
6402.30.50	6404.19.70	7013.39.40	7209.18.60	7215.10.00
6402.30.60	6404.19.80	7013.39.50	7209.25.00	7215.50.00
6402.30.70	6404.19.90	7013.39.60	7209.26.00	7215.90.10
6402.30.80	6404.20.20	7013.91.10	7209.27.00	7215.90.30
6402.30.90	6404.20.40	7013.91.20	7209.28.00	7216.10.00
6402.91.40	6404.20.60	7013.91.30	7209.90.00	7216.21.00
6402.91.50	6405.10.00	7013.99.10	7210.11.00	7216.22.00
6402.91.60	6405.20.30	7013.99.20	7210.12.00	7216.31.00
6402.91.70	6405.20.90	7013.99.40	7210.20.00	7216.32.00
6402.91.80	6405.90.90	7013.99.50	7210.30.00	7216.33.00
6402.91.90	6406.10.05	7013.99.60	7210.41.00	7216.40.00
6402.99.05	6406.10.10	7013.99.70	7210.49.00	7216.50.00
6402.99.10	6406.10.20	7013.99.80	7210.50.00	7216.91.00
6402.99.14	6406.10.25	7013.99.90	7210.61.00	7216.99.00
6402.99.18	6406.10.30	7018.20.00	7210.69.00	7217.10.10
6402.99.20	6406.10.35	7019.19.90	7210.70.30	7217.10.20
6402.99.30	6406.10.40	7019.90.10	7210.70.60	7217.10.30
6402.99.60	6406.10.45	7104.20.00	7210.90.10	7217.10.40
6402.99.70	6406.10.50	7114.11.45	7210.90.60	7217.10.50
6402.99.80	6812.50.10	7202.11.50	7210.90.90	7217.10.60
6402.99.90	6907.10.00	7202.21.75	7211.13.00	7217.10.70
6403.19.10	6907.90.00	7202.21.90	7211.14.00	7217.10.80
6403.19.30	6908.10.10	7202.49.10	7211.19.15	7217.10.90
6403.19.40	6908.10.50	7202.70.00	7211.19.20	7217.20.15
6403.19.50	6908.90.00	7202.91.00	7211.19.30	7217.20.30
6403.40.30	6911.10.10	7202.92.00	7211.19.45	7217.20.45
6403.40.60	6911.10.52	7202.93.00	7211.19.60	7217.20.60
6403.51.30	6911.10.58	7202.99.10	7211.19.75	7217.20.75
6403.51.60	6911.10.80	7202.99.50	7211.23.15	7217.30.15
6403.51.90	6912.00.20	7206.10.00	7211.23.20	7217.30.30
6403.59.15	6912.00.39	7207.11.00	7211.23.30	7217.30.45
6403.59.30	6912.00.45	7207.12.00	7211.23.45	7217.30.60
6403.59.60	7002.10.10	7207.19.00	7211.23.60	7217.30.75
6403.59.90	7005.21.10	7207.20.00	7211.29.20	7217.90.10
6403.91.30	7005.21.20	7208.10.15	7211.29.45	7217.90.50
6403.91.60	7005.29.08	7208.10.30	7211.29.60	7218.10.00
6403.91.90	7005.29.18	7208.10.60	7211.90.00	7218.91.00

7218.99.00	7226.91.25	7304.41.30	7312.10.90	8482.10.50
7219.11.00	7226.91.50	7304.41.60	7314.31.10	8482.20.00
7219.12.00	7226.91.70	7304.49.00	7314.41.00	8482.91.00
7219.13.00	7226.91.80	7304.51.10	7314.42.00	8482.99.05
7219.14.00	7226.92.10	7304.51.50	7317.00.55	8482.99.15
7219.21.00	7226.92.30	7304.59.10	7318.11.00	8482.99.25
7219.22.00	7226.92.50	7304.59.20	7318.14.10	8482.99.35
7219.23.00	7226.92.70	7304.59.60	7318.14.50	8482.99.45
7219.24.00	7226.92.80	7304.59.80	7320.10.60	8482.99.65
7219.31.00	7226.93.00	7304.90.10	7326.90.35	8483.20.80
7219.32.00	7226.94.00	7304.90.30	7419.99.15	8483.30.80
7219.33.00	7226.99.00	7304.90.50	7601.10.30	8483.60.80
7219.34.00	7227.10.00	7304.90.70	7601.20.30	8483.90.30
7219.35.00	7227.20.00	7305.11.10	7601.20.60	8483.90.70
7219.90.00	7227.90.10	7305.11.50	7604.21.00	8483.90.80
7220.11.00	7227.90.20	7305.12.10	7614.10.10	8525.10.30
7220.12.10	7227.90.60	7305.12.50	7614.90.40	8527.29.80
7220.12.50	7228.10.00	7305.19.10	7901.12.10	8527.31.05
7220.20.10	7228.20.10	7305.19.50	8101.10.00	8527.31.50
7220.20.60	7228.20.50	7305.20.20	8101.91.50	8528.12.24
7220.20.70	7228.30.20	7305.20.40	8101.92.00	8528.12.32
7220.20.80	7228.30.60	7305.20.60	8101.93.00	8528.12.40
7220.20.90	7228.30.80	7305.20.80	8102.10.00	8528.12.48
7220.90.00	7228.40.00	7305.31.40	8102.91.10	8528.12.56
7221.00.00	7228.50.10	7305.31.60	8104.19.00	8528.12.72
7222.11.00	7228.50.50	7305.39.10	8104.30.00	8528.12.97
7222.19.00	7228.60.10	7305.39.50	8105.10.30	8528.13.00
7222.20.00	7228.60.60	7305.90.10	8108.10.50	8528.21.29
7222.30.00	7228.60.80	7305.90.50	8109.10.60	8528.21.39
7222.40.30	7228.70.30	7306.10.10	8111.00.45	8528.21.42
7222.40.60	7228.70.60	7306.10.50	8112.40.60	8528.21.49
7223.00.10	7228.80.00	7306.20.10	8112.91.40	8528.21.52
7223.00.50	7229.10.00	7306.20.20	8112.91.60	8528.21.70
7223.00.90	7229.20.00	7306.20.30	8203.20.40	8528.21.90
7224.10.00	7229.90.10	7306.20.40	8205.90.00	8528.22.00
7224.90.00	7229.90.50	7306.20.60	8206.00.00	8528.30.40
7225.11.00	7229.90.90	7306.20.80	8211.10.00	8528.30.60
7225.19.00	7301.10.00	7306.30.10	8211.91.20	8528.30.68
7225.20.00	7301.20.10	7306.30.50	8211.91.25	8528.30.78
7225.30.10	7301.20.50	7306.40.10	8211.91.30	8528.30.90
7225.30.30	7302.10.10	7306.40.50	8211.91.40	8529.10.20
7225.30.50	7302.10.50	7306.50.10	8213.00.90	8529.90.03
7225.30.70	7302.20.00	7306.50.50	8214.90.30	8529.90.13
7225.40.10	7302.40.00	7306.60.10	8215.10.00	8529.90.33
7225.40.30	7304.10.10	7306.60.30	8215.20.00	8529.90.39
7225.40.50	7304.10.50	7306.60.50	8215.99.01	8529.90.43
7225.40.70	7304.21.30	7306.60.70	8215.99.05	8529.90.49
7225.50.10	7304.21.60	7306.90.10	8215.99.10	8529.90.53
7225.50.60	7304.29.10	7306.90.50	8215.99.15	8529.90.69
7225.50.70	7304.29.20	7307.19.90	8215.99.26	8529.90.83
7225.50.80	7304.29.30	7307.93.30	8215.99.30	8529.90.88
7226.11.10	7304.29.40	7308.90.30	8215.99.35	8529.90.93
7226.11.90	7304.29.50	7308.90.60	8301.10.20	8540.11.10
7226.19.10	7304.29.60	7312.10.30	8301.10.40	8540.11.24
7226.19.90	7304.31.30	7312.10.50	8301.10.80	8540.11.28
7226.20.00	7304.31.60	7312.10.60	8302.30.60	8540.11.30
7226.91.15	7304.39.00	7312.10.70	8482.10.10	8540.11.44

8540.11.48	9029.90.40	9105.11.40	9111.90.50
8540.11.50	9101.11.40	9105.11.80	9111.90.70
8540.12.50	9101.11.80	9105.19.20	9112.10.00
8540.12.70	9101.19.40	9105.19.30	9113.20.40
8540.20.20	9101.19.80	9105.19.50	9114.10.40
8540.20.40	9101.21.10	9105.21.40	9114.10.80
8540.40.00	9101.21.80	9105.21.80	9114.30.40
8540.50.00	9101.29.10	9105.29.10	9114.30.80
8540.60.00	9101.29.20	9105.29.20	9114.40.20
8540.71.40	9101.29.30	9105.29.30	9114.40.40
8540.72.00	9101.29.40	9105.29.40	9114.40.60
8540.79.00	9101.29.50	9105.29.50	9114.40.80
8540.81.00	9101.29.70	9105.91.40	9114.90.15
8540.89.00	9102.11.10	9105.91.80	9114.90.30
8540.91.15	9102.11.25	9105.99.50	9114.90.40
8540.91.50	9102.11.30	9105.99.60	9114.90.50
8607.19.06	9102.11.45	9106.10.00	9209.91.80
8701.20.00	9102.11.50	9106.20.00	9302.00.00
8703.10.10	9102.11.65	9106.90.75	9305.10.20
8703.21.00	9102.11.70	9106.90.85	9404.29.10
8703.22.00	9102.11.95	9107.00.80	9506.99.08
8703.23.00	9102.19.20	9108.11.40	9507.10.00
8703.24.00	9102.19.40	9108.11.80	9507.30.20
8703.31.00	9102.19.60	9108.12.00	9507.30.40
8703.32.00	9102.19.80	9108.19.40	9507.90.70
8703.33.00	9102.21.10	9108.19.80	9603.10.05
8703.90.00	9102.21.25	9108.91.10	9603.10.15
8704.21.00	9102.21.30	9108.91.20	9603.10.35
8704.22.10	9102.21.50	9108.91.30	9603.10.40
8704.22.50	9102.21.70	9108.91.40	9603.10.50
8704.23.00	9102.21.90	9108.91.50	9603.10.60
8704.31.00	9102.29.02	9108.91.60	9608.31.00
8704.32.00	9102.29.15	9108.99.20	9608.39.00
8704.90.00	9102.29.20	9108.99.40	9608.50.00
8706.00.03	9102.29.25	9108.99.80	9612.20.00
8706.00.05	9102.29.30	9109.11.10	9616.20.00
8706.00.15	9102.29.35	9109.11.20	
8706.00.25	9102.29.40	9109.11.40	
8707.10.00	9102.29.45	9109.11.60	
8707.90.50	9102.29.50	9109.19.10	
8708.92.50	9102.29.55	9109.19.20	
8712.00.15	9102.29.60	9109.19.40	
8712.00.25	9102.91.40	9109.19.60	
8712.00.35	9102.91.80	9109.90.20	
8712.00.44	9103.10.20	9109.90.40	
8712.00.48	9103.10.40	9109.90.60	
8714.91.30	9103.10.80	9110.11.00	
8714.91.50	9103.90.00	9110.12.00	
8714.92.10	9104.00.05	9110.19.00	
8714.93.28	9104.00.10	9110.90.20	
8714.93.35	9104.00.20	9110.90.40	
8714.94.90	9104.00.25	9110.90.60	
8714.95.00	9104.00.30	9111.10.00	
8714.96.10	9104.00.40	9111.20.20	
8714.96.90	9104.00.45	9111.20.40	
8714.99.80	9104.00.50	9111.80.00	
9029.20.20	9104.00.60	9111.90.40	

[FR Doc. 00–13169 Filed 5–24–00; 8:45 am]
BILLING CODE 3901–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting to be held June 12–16, 2000, starting at 9:00 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036.

The agenda will be as follows:

Specific Working Group Sessions: June 12: Working Group 1, Third Civil Frequency. June 13: Working Group 6, GPS/Interference; Working Group 2C, GPS/Inertial. June 14: 9 a.m.–12 p.m., Working Group 4, Precision Landing Guidance (GPS/LAAS); Working Group 6, Interference; 1:30 p.m.–4:30 p.m., SC–159 Ad Hoc, Recommendation Support. June 15: Working Group 2, GPS/WAAS; Working Group 4, Precision Landing Guidance (LAAS).

June 16: Plenary Session: (1) Chairman's Introductory Remarks; (2) Approve Summary of Previous Meeting; (3) Review Working Group (WG) Progress and Identify Issues for Resolution: (a) GPS/3rd Civil Frequency (WG–1); (b) GPS/WAAS (WG–2); (c) GPS/GLONASS (WG–2A); (d) GPS/Inertial (WG–2C); (e) GPS/Precision Landing Guidance (WG–4); (f) GPS/Airport Surface Surveillance (WG–5); (g) GPS Interference (WG–6); (h) SC–159 Ad Hoc; (4) Review of EUROCAE Activities; (5) Review/Approve Final Draft, NAVSTAR GPS L5 Civil Signal Specification; (6) Review/Approve Final Draft, SC–159 Response to the Johns Hopkins University Applied Physics Laboratory Recommendation Regarding Receiver Autonomous Integrity Monitoring; (7) Assignment/Review of Future Work; (8) Other Business; (9) Date and Location of Next Meeting; (10) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, at (202) 833–9339 (phone), (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 18, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–13182 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice Receipt of Noise Compatibility Program and Request for Review Austin-Bergstrom International Airport Austin, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by City of Austin for Austin-Bergstrom International Airport under the provisions of Title 49 USC, Chapter 475 (hereinafter referred to as "Title 49" and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Austin-Bergstrom International Airport under Part 150 in conjunction with the noise exposure maps and that this program will be approved or disapproved on or before November 8, 2000.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and the start of its review of the associated noise compatibility program are May 9, 2000. The public comment period ends July 8, 2000.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0652, (817) 222–5607. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Austin-Bergstrom International Airport is in compliance with applicable requirements of Part 150, effective May 8, 2000. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 8, 2000. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

On April 20, 1999, FAA published its approval of noise exposure maps for the Austin-Bergstrom International Airport in the **Federal Register.** On April 10, 2000, the City of Austin submitted a new 2004 noise exposure map. The FAA has completed its review of the 2004 the noise exposure maps and related descriptions submitted by City of Austin. The specific map under consideration is 2004 Future Condition Noise Exposure Map, Figure 10–1 in the submission.

In addition to the 2004 future condition noise exposure map, the City of Austin submitted to the FAA on April 10, 2000, descriptions and other documentation which were produced during Austin-Bergstrom International Airport, Austin, Texas, Part 150 Noise Compatibility Study. It was requested that the FAA review this material as the noise exposure map, as described in Title 49, and that the noise mitigation measures, to be implemented jointed by the airport and surrounding communities, be approved as a noise compatibility program under Title 49.

The FAA has determined that this map for Austin-Bergstrom International Airport is in compliance with applicable requirements. This determination is effective on May 8, 2000. FAA's determination on an airport operator's noise exposure map(s) is limited to a finding that the map(s) was developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information, or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Title 49. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Title 49. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received noise compatibility program for Austin-Bergstrom International Airport, also effective on May 8, 2000. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 8, 2000.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137

Austin-Bergstrom International Airport, City of Austin, Aviation Department, 3600 Presidential Blvd., Austin, Texas 78719

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, May 9, 2000.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 00–13181 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Regional Airport, Fayetteville, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Regional 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 June 26, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bradley S. Whited, Airport Director, of the City of Fayetteville at the following address: Mr. Bradley S. Whited, Airport Director, Fayetteville Regional Airport, P.O. Box 64218, Fayetteville, NC 28306.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Fayetteville under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lee Kyker, Manager of Airport Programs, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, GA 30337–2747, (404) 305–7161. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Fayetteville was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 8, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–01–C–00–FAY.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: October 1, 2002.

Total estimated net PFC revenue: $942,620.

Brief description of proposed project(s):

- Airport Entrance Road
- Jetway System Modifications
- Security System Upgrade
- Preplan runway safety areas
- Rehabilitate north general aviation ramp
- Security system upgrade, Phase II
- Design & construct RSA, Rwy 4
- Acquire land
- Renovate terminal, Ph II
- Construct RSA, Rwy 4, Ph 2
- Land Purchase
- Renovate terminal
- Construct RSA
- Acquire land
- Rehabilitate Runway 10–28
- Acquire land in fee
- Construct fire training facility & rehabilitate ARFF vehicle Update Airport Master Plan
- Install taxiway guidance signs & REILS
- Construct new general aviation area (design only)
- Acquire sweeper
- Install terminal loading bridges
- Acquire ARFF vehicle
- Construct non-license vehicle road (design only)
- Taxiway K (design only)

- Install utilities for general aviation
- Design for Highway 301 Connector
- Acquire land for airport development
- Airport terminal development
- Construct taxiway K (design only)
- Construct GA apron (design only)
- Acquire land for development
- Rehabilitate terminal building
- Install 107.14 security access system
- Construct non-license vehicle road (NLVR)
- Jet bridge modification
- Construct taxiway K

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Federal Aviation Administration.

Issued in Atlanta, Georgia on May 16, 2000.

Rans D. Black,

Acting Manager, Atlanta Airports District Office Southern Region.

[FR Doc. 00–13189 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements To Assist in the Development of Crash Outcome Data Evaluation Systems

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of availability;—discretionary cooperative agreements to assist in the development and use of Crash Outcome Data Evaluation Systems.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to assist states in the development and use of Crash Outcome Data Evaluation Systems (CODES) and solicits applications for projects under this program from states that have not previously been funded to develop CODES. Under this program states will link their existing statewide traffic records with medical outcome and charge data. The linked data will be used to support highway safety decision-making at the local, regional, and state levels to reduce deaths, non-fatal injuries, and health care costs resulting from motor vehicle crashes.

DATES: Applications must be received at the office designated below on or before July 24, 2000.

ADDRESSES: Applications must be submitted to DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Lamont O. Norwood/Mr. Mark Kromer, 400 7th Street SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–00–H–07212. Interested applicants should contact Mr. Norwood to obtain the application packet. Included in the application packet are reports about data linkage and applications for linked data developed by the CODES project.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Lamont O. Norwood, Office of Contracts and Procurement. All questions and requests for copies may be directed by e-mail at *lnorwood@nhtsa.dot.gov* or, by telephone, at (202) 366–8573. Programmatic questions relating to this cooperative agreement program should be directed to Dennis Utter, CODES Contracting Officer's Technical Representative (COTR), at NHTSA, Room 6125, (NRD–31) 400 7th Street SW, Washington, DC 20590, or by e-mail at *dutter@nhtsa.dot.gov,* or by telephone at (202) 366–5351.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Crash data alone are unable to convey the magnitude of the medical and financial consequences of the injuries resulting from motor vehicle crashes or the success of highway safety decision-making to prevent them. Outcome information describing what happens to all persons involved in motor vehicle crashes, regardless of injury, is needed.

Person-specific outcome information is collected at the crash scene and en route by EMS personnel, at the emergency department, in the hospital, and after discharge. When these data are computerized and merged statewide, they generate a source of population-based data that is available for use by state and local traffic safety and public health professionals. Linking these records to statewide crash data collected by police at the scene is the key to developing relationships among specific vehicles, crash, and occupant behavior characteristics and their medical and financial outcomes.

The feasibility of linking crash and medical outcome (EMS, emergency department, hospital discharge, death certificate, claims, etc.) data was demonstrated by the CODES project. This project evolved from the Intermodal Surface Transportation Efficiency Act of 1991, which mandated that NHTSA prepare a Report to Congress about the benefits of safety belt and motorcycle helmet use. NHTSA provided funding to the States of Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin to link their state data and use the linked data to analyze the effectiveness of safety belts and motorcycle helmets. The Report was delivered to Congress in February 1996. In 1996, three CODES states (New York, Pennsylvania, and Wisconsin) and three states which linked crash and medical data without CODES funding (Alaska, Connecticut, and New Mexico) were awarded NHTSA research funds to develop state-specific applications for linked data. In 1997, NHTSA awarded grants for CODES linkage to Connecticut, New Hampshire, Maryland, North Dakota, South Dakota, Oklahoma, and Nevada. Iowa, Kentucky, Massachusetts, Nebraska, and South Carolina which were funded to implement the CODES linkage in 1998. Arizona, Delaware, Minnesota and Tennessee were funded in 1999.

The CODES project also demonstrated that linked data have many uses for decision-making related to highway safety and injury control. In addition to demonstrating the effectiveness of safety belts and motorcycle helmets in preventing death, injury, and costs, the linked data were used to identify populations at risk for increased severity or high health care costs, the impact of different occupant behaviors on outcome, the safety needs at the community level, the allocation of resources for emergency medical services, the injury patterns by type of roadway and geographic location, and the benefits of collaboration on data quality. When crash, vehicle, and behavior characteristics were linked to outcome information, decision-makers could identify those prevention programs that had the most impact on preventing or reducing the medical and financial costs associated with motor vehicle crashes.

Data linkage fulfills expanded data needs without the additional expense and delay of new data collection. The linkage process itself provides feedback about data quality and content problems which leads to improvement in the state data. Thus, it is in NHTSA's interest to encourage states to qualify for CODES funding. NHTSA benefits from the improved quality of the state data, while the states benefit from state-specific

medical and financial outcome information about motor vehicle crashes.

Objective

The objective of this Cooperative Agreement program is to provide resources to the applicant to:

1. Coordinate the development and institutionalization of the capability to link state crash and medical outcome data to identify the medical and financial consequences of motor vehicle crashes.

2. Utilize this information in crash analysis, problem identification, and program evaluation to improve decision-making at the local, state, and national levels related to preventing or reducing deaths, injuries, and direct medical costs associated with motor vehicle crashes.

3. Provide NHTSA with population-based linked crash and injury data to analyze specific highway safety issues of interest to NHTSA in collaboration with the CODES states.

4. Develop data linkage capabilities as a means of improving the quality of state data that support NHTSA's national data.

This cooperative agreement is not intended to fund basic development of data systems, but rather to create linkages among existing records. However, it is hoped that this project will inspire States to develop and improve their state data and to expedite these activities in order to become eligible for CODES funding.

General Project Requirements

1. Link statewide population-based crash to injury data for any two calendar years available since 1996, to produce a linked data file that, if not statewide, reflects a contiguous geographical area that contains at least three (3) million residents in which the residents obtain all levels of emergency medical care without the need to be transferred elsewhere, except in rare occurrences, when involved in motor vehicle crashes. The linked data must be representative and generalizable for highway traffic safety purposes in the state/area. All applicants must be able to clearly document what data are available and what data are missing and the significance of the missing data for highway traffic safety planning efforts.

a. Develop a state/area-wide CODES that includes outcome information for all persons, injured and uninjured, involved in police reported motor vehicle crashes.

(1) The CODES should consist of crash data linked to hospital and either EMS or emergency department data, preferably both. States without EMS or emergency department data are eligible if this type of outpatient information can be obtained from insurance claims data for everyone involved in a crash who is treated at an outpatient center.

(2) Additional state/area-wide data (driver licensing, vehicle registration, citation/conviction records, insurance claims, HMO/managed care/etc., outpatient records, etc.) should be linked as necessary to meet state/area wide objectives.

b. Set up processes for collaboration among the technical experts who manage the data files being linked.

c. Assign an agency to be responsible for:

(1) Obtaining a computer and linkage software to be dedicated to CODES activities (the computer and software resources may not be permanently tied to an existing computer network in such a way as to preclude their movement in the future, as directed by the CODES Board of Directors, to another organization more interested in continuing the linkage and application for the linked data);

(2) Implementing probabilistic linkage methodology to facilitate tracking the crash victim from the scene to final disposition/recovery using existing computerized state/area-wide population-based databases;

(3) Validating the linkage results by evaluating the rate of false positives and false negatives among the linked and unlinked records;

(4) Analyzing the linked data; and,

(5) Cross-training sufficient staff to ensure continuation of the linkage capability in spite of changes in organizational priorities or personnel during or after the project period.

d. Document the file preparation, linkage and validation processes so that the linkage can be repeated efficiently during subsequent years after Federal funding ends and provide evidence of this documentation.

e. Provide NHTSA a version of the linked data file with supporting documentation that conforms to State laws and regulations governing patient/provider confidentiality, yet satisfies minimum NHTSA data needs.

2. Use the linked data to influence highway traffic safety and injury control decision-making by implementing at least one application of linked data that is expected to have a positive impact on reducing death, injury, and direct medical costs.

3. Use the linked data to prepare management reports using a format standardized by NHTSA for a national CODES report.

4. Develop the computer programs needed to translate the linked data into information useful for highway traffic safety and injury control at the local, regional, or state/area-wide level.

a. Develop, for access within the State, a public-use version of the linked data, copies of which will be distributed upon request.

b. Develop the resources necessary to produce and distribute routine reports, respond to data requests, and provide access to the linked data for analytical, management, planning, and other purposes after Federal funding ends.

c. Use the Internet and other electronic mechanisms to efficiently distribute and share information generated from the linked data.

5. Promote collaboration between the owners and users of the state/area-wide data to facilitate data linkage and applications for linked data.

a. Establish a state/area-wide CODES collaborative network.

(1) Convene a Board of Directors consisting of the data owners and major users of the state/area-wide data. The CODES Board of Directors will be responsible for managing and institutionalizing the linked data, establishing the data release policies for the linked data, supporting the activities of the grantee, ensuring that data linkage and application activities are appropriately coordinated within the state/area, and resolving common issues related to data accessibility, availability, completeness, quality, confidentiality, transfer, ownership, fee for service, management etc. The CODES Board of Directors shall meet bi-monthly.

(2) Convene a CODES Advisory Group consisting of the CODES Board of Directors and other stakeholders interested in the use of linked data to support highway safety, injury control, EMS, etc. The CODES Advisory Group will be informed of the results of the data linkage, application of the data for decision-making, the quality of the state/area-wide data for linkage and the quality of the linked data for analysis. The CODES Advisory Group shall meet twice a year.

b. Promote coordination of the various stakeholders through use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication among all parties to minimize the expense of travel.

6. Work collaboratively with NHTSA to implement the Cooperative Agreement.

a. *Attend Initial Briefing Meeting.* Each grantee shall attend a briefing meeting (date and time to be scheduled within 30 days after the award) in Washington, DC with NHTSA staff. The

purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, review the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making and discuss the agendas for the Board of Directors and Advisory Group.

b. *Submit Detailed Action Plan and Schedule.* Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule, covering the remaining funding period, for accomplishing the data linkage and incorporating information generated from linked data into the processes for highway safety or injury control decision-making. The action plan shall be subject to the technical direction and approval of NHTSA.

c. *Attend Technical Workshops.* All grantees together shall attend two technology transfer workshops during project performance at locations convenient to the majority of CODES grantees. The first meeting, to be scheduled during the ninth or tenth month of funding, will be organized to share data linkage experiences, discuss standardized formats for management reports, review the proposed state-specific highway safety applications of linked data, and resolve common problems. The second meeting will be scheduled approximately 12 months after first technical assistance meeting, at the end of the funding period, for the purpose of sharing results and making recommendations for future CODES projects.

d. *Attend National Meeting.* At the direction of the COTR, Grantee shall attend one national Meeting to report on progress or results from their CODES project.

e. *Progress Report.* Grantee shall submit quarterly progress reports. During the period of performance, the grantee will provide letter-type written reports to the COTR. These reports will compare what was proposed in the Action Plan with actual accomplishments during the past quarter; what commitments have been generated; what follow up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter.

f. Develop a plan to institutionalize the data linkage and applications for linked data after Federal funding ends. By the end of the 15th month of funding, each grantee shall submit a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

g. *Project Report.* The grantee shall deliver to NHTSA, at the end of the project, a final report describing the results of the data linkage process, and the applications of the linked data generated during the project.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the Cooperative Agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and coordinate activities between the grantee and NHTSA.

2. Provide, at no cost to the grantee, training and technical assistance by a CODES expert for up to two weeks on-site and off-site during the project to assist the grantee in preparing the files for linkage, implementing probabilistic linkage techniques, validating the linkage results, developing applications for the linked data, and organizing the CODES Board of Directors and Advisory Group.

3. Develop a format in which the linked data and supporting documentation will be delivered to NHTSA.

4. Conduct Initial Briefing at NHTSA Headquarters in Washington, DC. (Date and time to be scheduled within 30 days after the award.) The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, identify the tasks to be specified in the action plan for the data linkage and applications of the linked data for highway safety or injury control decision-making, and discuss agendas for the Board of Directors and Advisory Group.

5. Conduct two Technical Assistance meetings for the purpose of technology transfer. The first meeting, to be scheduled during the ninth or tenth month of funding, will be organized to share data linkage experiences, develop a standardized format for management reports, review the proposed state-specific highway traffic safety applications of linked data, and resolve common problems. The second meeting will be scheduled at the end of the funding period for the purpose of sharing results and making recommendations for future CODES projects. Locations for the Workshops will be determined based on the location of the Grantees. However, for the purpose of cost estimation, assume the workshops will be held in Washington, DC.

6. Collaboratively work with the state when using the state's linked data to analyze and report on specific highway safety issues.

7. When appropriate, NHTSA will publish state-specific reports on CODES applications.

Period of Support

The project study effort described in this announcement will be supported through the award of up to four (4) Cooperative Agreements, depending upon the merit of the applications received and the availability of funding. It is anticipated that individual award amounts will range from $250,000–$300,000. Project efforts involving linkage of the state/area-wide data and applications for the linked data must be completed within twenty-one months after funding.

Eligibility Requirements

The grantee must be a state agency involved with highway traffic safety, such as a State Highway Safety Office, Department of Transportation or other State agency with demonstrated activities in the highway traffic safety areas, to ensure active involvement by highway traffic safety stakeholders. States that have previously been funded to develop CODES are not eligible. Only one application should be submitted for a state/area. Because this Cooperative Agreement program requires extensive collaboration among the data owners in order to achieve the program objectives, it is envisioned that the grantee agency may need to actively involve the data owners in the development of the formal application and may need to sub-contract activities with at least one of them to implement a successful CODES.

While the general eligibility requirements are broad, applicants are advised that this Cooperative Agreement program is not designed to support basic developmental efforts. Although no single organization within any state/area has all of the required data capabilities, the application should demonstrate strong collaborative agreements with the data owners and access to at least the state/area-wide crash, hospital, and either EMS or emergency department data, or both, by the time of the award. States/areas that collect at least the date of birth and zip code of residence on their crash data and have state/area-wide health and/or vehicle insurance claims information may be eligible, in

spite of the lack of EMS or emergency department information, if the claims data include everyone involved in motor vehicle crashes. In addition, it is important that the applicant indicate the level of commitment, with state/area funding and/or shared resources, by the data owners to meet program objectives, particularly institutionalization of the data linkage and applications for linked data.

Application Procedure

Each applicant must submit one original and two (2) copies of the application package to: DOT/National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Lamont O. Norwood/Mark Kromer, 400 7th Street, SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only. An additional two (2) copies will facilitate the review process, but are not required. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–00–H–07212. Only complete application packages received on or before 2 p.m. on July 24, 2000 will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (REV. 7–97, including 424A and 424B), Application for Federal Assistance, with the required information filled in and assurances signed (SF 424B). While the Form 424A deals with budget information and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs (direct labor, including labor category, level of effort, and rate; direct materials including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontractors/subgrants, with similar detail, if known; and overhead), as well as any costs the applicant proposes to contribute or obtain from other sources in support of the project. Applicants shall assume that awards will be made during September 2000 and should prepare their applications accordingly.

2. The application shall include a program narrative statement of not more than 20 pages, which addresses the following as a minimum:

a. A brief description of the state/area in terms of its highway safety and injury control decision-making processes for planning, performance monitoring and other functions aimed at reducing death, injury, and costs of injuries resulting from motor vehicle crashes. This description should indicate how linked data will make a difference to the decision-making processes.

b. A brief description of the existing crash and medical outcome data files. Applicants will link state/area-wide population-based crash data to EMS (and/or emergency department or insurance claims) and hospital discharge data to obtain medical and financial outcomes for persons injured in motor vehicle crashes for any two calendar years of data available since 1996. Linkages to census, other traffic records (vehicle registration, driver licensing, roadway, conviction/citation, *etc.*), insurance claims, *etc.*, are encouraged to meet priorities for highway safety and injury control decision-making. The following information should be included describing the state/area-wide data:

(1) The total crashes, total persons involved in crashes, total victims with injuries caused by a motor vehicle crash as identified or estimated and a descriptive profile of the total injuries by severity level, if available, state/area-wide.

(2) Information about the current status of the data files to be linked, recorded using the format below:

Data files	Reporting threshold (A)	Rate of compliance with (A)	Data years to be linked (19XX–19XX)	Month and year when most recent data year will become available	Percent of records computerized	Can remaining records be computerized? (Y/N)
Crash.						
EMS.						
ED.						
Hospital.						
Other.						

(3) The data elements chosen to identify persons and crashes and, for each, the missing data rate.

(4) The data elements indicating type of injury, severity of injury, total charges, a payer source and, for each, the missing data rate.

c. A brief description of the proposed sequence for linking the data files.

d. A brief description of how staff from the various data owners will be cross-trained in the CODES linkage to compensate for potential future changes in organizational priorities and personnel.

e. A brief description of the process to be used to ensure adequate documentation of the data files and linkage process.

f. A brief description of how the linked data will be converted into information useful for the highway safety and injury control decision-making processes for the purpose of reducing death, injury, and costs resulting from motor vehicle crashes.

Describe:

(1) The different types of decision-making processes, currently being utilized in the state/area, that identify highway traffic safety and injury control objectives and prioritize prevention programs that have the most impact on reducing death, injury and direct medical costs associated with motor vehicle crashes; and

(2) Why linked data are needed to make these decision-making processes more effective and how the data will be incorporated.

g. A brief description of each member of the CODES Board of Directors and the proposed arrangements describing the management and use of the linked data.

3. The application shall include an appendix. A large appendix is strongly discouraged. Additional material should be included only if it is necessary to support information about data linkage, applications for linked data or institutionalization discussed in the application. Do not send copies of brochures, documents, etc., developed as the result of a collaborative effort in the state/area. The appendix should include the following:

a. Letters of support from each proposed member of the CODES Board of Directors. A letter of support should reflect the signer's level of commitment to the CODES project and thus should not be a form letter. The letter of support should document:

(1) Why linked data are important to the agency.

(2) The priority assigned by the agency to obtain linked data compared to other responsibilities.

(3) The agency's level of commitment in terms of the number of staff and the dollars or shared resources which will be available to support and institutionalize CODES.

(4) The agency's willingness to collaborate with other data owners to support shared ownership of the linked data.

(5) The agency's permission to release the linked data (or description of policies which would restrict transfer) to NHTSA at the end of the project.

b. A brief description or letters of support should be included for the other stakeholders to be represented on the CODES Advisory Group. The letters of support should indicate the stakeholder's need for the linked data, and willingness to facilitate the linkage of state/area-wide data or use of linked data for decision-making.

c. A list of activities in chronological order and a time line to show the expected schedule of accomplishments and their target dates.

d. Descriptions of the proposed project personnel as follows:

(1) Project Director: Include a resume along with a description of the director's leadership capabilities to make the various stakeholders work together.

(2) Key personnel proposed for the data linkage and applications of linked data, and other personnel considered critical to the successful accomplishment of this project: include a brief description of qualifications, employment status (permanent, temporary) in the organization, and respective organizational responsibilities. The proposed level of effort in performing the various activities should also be identified.

e. A brief description of the applicant's organizational experience in performing similar or related efforts, and the priority that will be assigned to this project compared to the organization's other responsibilities.

f. A brief description of any potential delays in implementing the project because of requirements for legislative approval before CODES funds can be expended.

g. *Data Use Agreement.* A description of the existing State laws and regulations governing patient/provider confidentiality in the data files being linked that would restrict use of the data for linkage and/or for transfer of the CODES linked data to NHTSA and conditions under which the linked data file may be used by NHTSA.

Application Review Process and Evaluation Factors

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. *Understanding the intent of the program* (30%). The applicant's recognition of the importance of CODES to obtain medical and financial outcome data which are necessary for a comprehensive evaluation of the impact of highway safety and injury control countermeasures. The applicant's understanding of the importance of developing CODES as a meaningful and appropriate strategy for improving traffic records capabilities and ensuring the continuation of CODES after completion of this project.

2. *Technical approach for project completion* (30%). The reasonableness and feasibility of the applicant's approach for successfully achieving the objectives of the project within the required time frame. The appropriateness and feasibility of the applicant's proposed plans for data linkage and applications for the linked data. Evidence that the applicant has the necessary authorization and support from data owners to access medical and non-medical state/area-wide data, particularly total charges and information about type and severity of injury, which are not routinely available for highway safety analyses and the necessary authorization to data.

3. *Project personnel* (20%). The adequacy of the proposed personnel to successfully perform the project study, including qualifications and experience (both general and project related), the various disciplines represented, and the relative level of effort proposed for the professional, technical and support staff.

4. *Organizational capabilities* (20%). The adequacy of organizational resources and experience to successfully manage and perform the project, particularly to support the collaborative network and respond to the increasing demand for access to the linked data. The proposed coordination with and use of other organizational support and resources, including other sources of financial support.

Depending upon the results of the evaluation process, NHTSA may choose to alter the number of awards. In addition, NHTSA may suggest revisions to applications as a condition of further consideration to ensure the most efficient and effective performance consistent with the objectives of the project. An organizational representative of the National Association of Governors' Highway Safety Representatives will be assisting in NHTSA's technical evaluation process.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Priority may be given to those applicants that have statewide data available for linkage.

2. Priority may be given to applicants who have the highest probability of maintaining the collaborative network of data owners and users, of institutionalizing the linkage of the crash and medical outcome data on a routine basis, and of continuing to respond to data requests after the project is completed.

3. Priority may be given to an applicant on the basis that the application fits a profile of providing NHTSA with a broad range of population densities (rural through metropolitan) with different highway safety needs.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants). In addition, grantees must certify that data release agreements have been signed by the owners of the data files being linked to transfer the CODES linked database to NHTSA, according to NHTSA specifications.

2. Reporting Requirements and Deliverables:

a. *Detailed Action Plan and Schedule.* Within 30 days after the briefing meeting, the grantee shall deliver a detailed action plan and schedule for accomplishing the data linkage and applications of linked data for decision-making, showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the technical direction

and approval of NHTSA and will describe the following:

(1) The personnel and hardware resources required to perform the data linkage.

(2) The process for obtaining the different files required for linkage.

(3) The process for accelerating the data processing schedule, if necessary, so that the state/area-wide data are available in a timely manner for the linkage.

(4) The process for verifying the data and performing additional edits on the linkage variables.

(5) The process for resolving problems expected during linkage and their proposed solutions.

(6) The process for documenting the content of the various linked data files, programs used for editing, and the linkage process itself.

(7) The milestones for completing the various phases of the probabilistic linkage and validation processes.

(8) The milestones for proposed meeting schedules and actions by the Board of Directors and Advisory Group.

(9) Date(s) for providing the linked data to NHTSA.

(10) The process for identifying the limitations of the final linked database or applications of the linked data, if any.

(11) The process for ensuring access to the linked data as demand for information increases.

(12) The process for choosing those applications of linked data that will have the most impact on reducing death, injury, and costs of injuries related to motor vehicle crashes.

(13) The milestones for implementing the applications.

(14) The benefits expected from the applications of the linked data.

b. *Quarterly Progress Report.* During the performance, the grantee will provide letter-type written reports to the NHTSA COTR. These reports will compare what was proposed in the Plan of Action with actual accomplishments during the past quarter; what commitments have been generated; what follow-up and state-level support is expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the next quarter. These reports will be submitted seven days after the end of each quarter.

c. *Board of Directors and Advisory Group Meetings.* Copies of the agenda and minutes for each Board of Directors and Advisory Group Meeting will be attached to the Progress Report submitted to NHTSA immediately following the meeting.

d. *Institutionalization Plan.* The grantee shall deliver to NHTSA, by the end of the 15th month of funding, a long-range plan and schedule to institutionalize data linkage and the use of linked data for highway safety and injury control decision-making within the state.

e. *Project Report.* The grantee shall deliver to NHTSA, at the end of the project, a final report describing the results of the data linkage process, and the applications of the linked data. The report shall include the following:

(1) A description of the state/area wide linked crash and injury data;

(2) A description of the file preparation;

(3) A description of the linkage, validation processes and results;

(4) A description of the extent of the documentation and how the documentation will facilitate linkage in subsequent years;

(5) A discussion of the limitations of the linked data and subsequent applications of these data;

(6) A description of the applications of linked data implemented for decision-making and results of the decision-making;

(7) A description of how the data linkage and use of linked data for decision making has been institutionalized for decision-making;

(8) A description of the documentation created to facilitate repeating of the linkage process and an estimate of how much time is needed to repeat the linkage in subsequent years;

(9) A copy of the public-use formats that were successful for incorporating linked data into the decision-making processes for highway safety and injury control; and

(10) A copy of the management reports prepared using the standardized format for the national CODES report.

f. *CODES Linked Database.* The grantee shall deliver to NHTSA after linkage, at the date specified in the Action Plan, the CODES linked databases. NHTSA will use the data to help facilitate the development of data linkage capabilities at the state/area-wide level and to encourage use of the linked data for decision making.

The deliverables will include:

(1) The database in an electronic media and format acceptable to NHTSA, including all persons, regardless of injury severity (none, fatal, non-fatal), involved in a reported motor vehicle crash for any two calendar years of available data since 1996, and including medical and financial outcome information for those who are linked.

(2) A copy of the file structure for the linked data file.

(3) Documentation of the definitions and file structure for each of the data elements contained in the linked data files.

(4) An analysis of the quality of the linked data and a description of any data bias which may exist based on an analysis of the false positive and false negative linked records.

3. During the effective performance period of Cooperative Agreements awarded as a result of this announcement, the agreement as applicable to the grantee shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued: May 19, 2000.

Joseph Kanianthra,

Acting Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 00–13100 Filed 5–24–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Incentive Grants To Support Increased Seat Belt Use Rates

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary grants to support innovative projects designed to increase seat belt use rates.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the second year of a discretionary grant program under Section 1403 of the Transportation Equity Act for the 21st Century (TEA–21) to provide funding to States for innovative projects to increase seat belt use rates. Consistent with last year, the goal of this program is to increase seat belt use rates across the nation in order to reduce the deaths, injuries, and societal costs that result from motor vehicle crashes. This notice solicits applications from the States, the District of Columbia and Puerto Rico, through their Governors' Representatives for Highway Safety, for funds to be made available in FY 2001. Detailed application instructions are provided in the Application Contents section of this Notice. The Section 157 Innovative grants will be awarded competitively based upon the evaluation results of the applications received. Detailed information on the evaluation criteria is provided in the Application Review Procedures and Evaluation Criteria section of this Notice.

DATES: Applications must be received by the office designated below on or before July 26, 2000.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Program No. DTNH22–00–G–09200

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Amy Poling, Office of Contracts and Procurement by e-mail at apoling@nhtsa.dot.gov. or by phone at (202) 366–9552. Programmatic questions relating to this grant program should be directed to Philip Gulak, Occupant Protection Division (NTS–12), NHTSA, 400 7th Street, SW, Room 5118, Washington, DC 20590, by e-mail at pgulak@nhtsa.dot.gov, or by phone at (202) 366–2708. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

The Transportation Equity Act for the 21st Century (TEA–21), Pub.L. 105–178, was enacted on June 9, 1998. Section 1403 of TEA–21 contained a safety incentive grant program for use of seat belts. Under this program, funds are allocated each fiscal year from 1999 until 2003 to States that exceed the national average seat belt use rate or that improve their State seat belt use rate, based on certain required determinations and findings. Section 1403 provided that, beginning in fiscal year 2000, any funds remaining unallocated in a fiscal year after the determinations and findings related to seat belt use rates have been made are to be used to "make allocations to States to carry out innovative projects to promote increased seat belt use rates." Today's notice solicits applications for funds that will become available in fiscal year 2001 under this latter provision.

TEA–21 imposes several requirements under the innovative projects funding provision. Specifically, in order to be eligible to receive an allocation, a State must develop a plan for innovative projects to promote increased seat belt use rates and submit the plan to the Secretary of Transportation (by delegation, to NHTSA). NHTSA was directed to establish criteria governing the selection of State plans that are to receive allocations and was further directed to "ensure, to the maximum extent practicable, demographic and geographic diversity and a diversity of seat belt use rates among the States selected for allocations." Finally, subject to the availability of funds, TEA–21 provides that the amount of each grant under a State plan is to be not less than $100,000.

In the following sections, the agency describes the application and award procedures for receipt of funds under this provision, including requirements related to the contents of a State's plan for innovative projects and the criteria the agency will use to evaluate State plans and make selections for award. To assist the States in formulating plans that meet these criteria, we have provided an extensive discussion of strategies for increasing seat belt use and of the ways in which States might demonstrate innovation. Please refer to the Appendix at the end of this Notice for additional background information about strategies that have been used in the past to increase belt use.

Objective of This Grant Program

The objective of this grant program is to increase State seat belt use rates, for both adults and children, by supporting the implementation of innovative projects that build upon strategies known to be effective in increasing seat belt use rates. Because one of the best ways to ensure that children develop a habit of buckling up is for parents to properly restrain them in child safety seats, efforts to increase the use of child safety seats, in addition to seat belts, may be included among the innovative efforts in a State's plan. However, efforts to increase seat belt use rates must remain the focus of the State's plan.

Examples of Effective Innovative Strategies

Recent seat belt use increases in California, North Carolina, Louisiana, Georgia, Maryland, and the District of Columbia (see discussion in next section), as well as increases following national mobilizations, have demonstrated the tremendous potential of highly visible enforcement of strong laws to increase seat belt and child seat use. Given the dramatic results of these programs, NHTSA believes that highly visible enforcement is an important foundation upon which any effective program should be based. An extensive review of the efforts in both the United States and Canada demonstrates that, without a core of highly visible enforcement efforts, high usage rates have not been achieved in any major jurisdiction.

In view of these findings, to be considered for award of funds under this program, the State's innovative project plan should be based on a core component of highly visible enforcement of its seat belt use law with the clear intent of increasing the State's seat belt use rate. A proposal to increase seat belt use in only a limited number of jurisdictions, that would have a questionable impact on the overall state seat belt use rate, may be rejected during the evaluation process. Other components of the plan should support the core enforcement component. If a State is already pursuing a significant and visible enforcement effort, the innovative project plan should detail components that support, expand, or complement the existing enforcement effort. States submitting an innovative project plan with a core component (and supporting components) based on an approach other than enforcement should provide a strong rationale for the proposed approach, preferably accompanied by research evidence, demonstrating the significant potential for increasing the State's seat belt use rate. NHTSA will carefully consider this rationale in its evaluation of the proposal.

A State may demonstrate innovation in its enforcement efforts in a number of ways. If a State is not currently engaged in any form of highly visible enforcement of its occupant protection laws, implementation of such a program, in and of itself, would be innovative to that State. Additionally, innovation may be demonstrated in gaining essential support, implementing statewide training programs, and planning the logistics for wide scale enforcement supported by public information activities. For States that already are engaged in substantial enforcement efforts, innovation can be demonstrated by expanding these efforts. This might include finding more effective ways to reach rural, urban, or diverse groups with strategies designed to address the problem of low seat belt use among those groups. States that have upgraded their laws recently to allow for primary enforcement may wish to initiate innovative ways to implement, enforce, and publicize their newly enacted legislation. For States with secondary enforcement laws, where a motorist must be stopped for another offense before being cited for failure to buckle up, innovation may be demonstrated by integrating the enforcement of the seat belt law with enforcement of another traffic safety law (*e.g.*, an alcohol impaired driving law). Many opportunities for innovation exist, regardless of the State's current seat belt

use rate or its ongoing efforts to increase it.

Following are some examples of innovative activities in support of a core component of enforcement:

—Initiate, or expand in novel ways, the operation of existing State or local enforcement-related campaigns;
—Implement highly visible seat belt and child safety seat enforcement efforts in major urban areas, in rural areas, or throughout the State;
—Expand participation across the State in semi-annual national seat belt enforcement mobilizations (*i.e.,* Operation ABC conducted in May and November);
—Plan and support efforts to train and motivate law enforcement officers, prosecutors and judges to consistently enforce, prosecute and adjudicate occupant protection law violations;
—Mount a highly visible program to implement newly enacted legislation which upgrades the State's seat belt or child passenger safety law;
—Initiate or expand public information and education programs designed to complement newly upgraded legislation and/or enhanced enforcement efforts;
—Establish new partnerships and coalitions to support ongoing implementation of legislation or enforcement efforts (*e.g.,* health care and medical groups, partnerships with diverse groups, businesses and employers);
—Initiate or expand public awareness campaigns targeted to specific populations that have low seat belt use (*e.g.,* part-time users; parents of children 0–15 years old; minority populations, including Native Americans; rural communities; males 15–24 years old; occupants of light trucks and sport utility vehicles);
—Implement a program to train law enforcement personnel on the importance of seat belt use, the specifics of the State's seat belt use law, and the importance of enforcing such law to increase usage rates;
—Initiate or expand standardized child passenger safety training of police officers and/or child passenger safety checks and/or clinics across broad geographical areas (*e.g.,* statewide, in major metropolitan areas, in rural areas of the State);
—Initiate, or expand in novel ways, campaigns which use enforcement of other traffic laws (*e.g.,* driving while intoxicated laws) as a means for implementing highly visible enforcement of seat belt use laws.

If a State wishes to submit a plan proposing a core component other than enforcement, it should demonstrate innovation by proposing to perform supporting activities similar in scope to those listed above. The State should demonstrate that the proposed activities have the potential to increase the State's seat belt use rate.

Self-Evaluations of Programs, Management and Resources

Meaningful and timely self-evaluations of each State's innovative programs, management, and associated resources are very important to improving programs in subsequent years. On an annual basis, grantees and NHTSA need to generate the most useful insights and most valuable lessons possible from the 157 program. Consequently, program evaluation will be a necessary component of each award (see Application Contents, Section C.2.e.).

NHTSA Involvement

In support of the activities undertaken by this grant program, NHTSA will:

1. Provide a Contracting Officer's Technical Representative (COTR) to coordinate activities between the Grantee and NHTSA during grant performance, and to serve as a liaison between NHTSA Headquarters, NHTSA Regional offices and the grantee.
2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

Availability of Funds and Period of Support

The efforts solicited in this announcement will be supported through the award of grants to a number of States, on the basis of the evaluation criteria identified below. The number of grants awarded will depend upon the merits of the applications received, the amount of funds available in fiscal year 2001, and the size of the grants awarded to individual States. The total amount of funds to be made available is not known at this time, as it is dependent upon appropriations by the Congress and the amount of allocations to States based on State seat belt use rates achieved (see discussion in Background section, above). However, the agency estimates that as much as $25–$30 million may become available for this program in fiscal year 2001.

In accordance with TEA–21, the minimum amount of an individual grant award to a State will be $100,000, subject to the availability of funds. However, NHTSA may make individual awards in amounts significantly greater than $100,000, subject to the availability of funds and consistent with the merits of a State's application. In fiscal year 2000, forty-six Innovative grants were awarded. Those grants ranged from $121,500 to $1,557,608. At this time, neither the exact amount of funds available nor the number and proposed costs of meritorious State applications can be determined. There is no assurance that the number of grant awards in FY 2001 will be the same or similar to the number of awards in FY 2000, nor is there any assurance that those States that received awards in FY 2000 will receive awards in FY 2001. In addition, NHTSA may choose to fund an entire plan, or portions of a plan or it may choose to reject a plan, after review based on the evaluation criteria. There is no cost-sharing requirement under this program. The period of support for a grant under this program will be a total of 15 months, with 12 months of plan implementation, and three months for evaluation and preparation of the annual report.

NHTSA estimates that the award of Section 157 Innovative Grants for fiscal year 2001 will occur during January 2001.

Allowable Uses of Federal Funds

Allowable uses of Federal funds shall be governed by the relevant allowable cost section and cost principles referenced in 49 CFR part 18—Department of Transportation Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Funds provided to a State under this grant program shall be used to carry out the activities described in the State's plan for which the grant is awarded.

Eligibility Requirements

Only the 50 States, the District of Columbia, and Puerto Rico, through their Governors' Representatives for Highway Safety, will be considered eligible to receive funding under this grant program.

Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, SW, Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required.

Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Grant Program No. DTNH22–00–G–09200. Only complete application packages submitted by a State's Governor's Representative for Highway Safety on or before July 26, 2000 will be considered.

Application Contents

This year, the required contents of each State's application will be based upon the State's application and award results for FY 2000 under this grant program.

A. If a State received an award based on a one-year proposal and would like to continue the same or similar work, it may submit an updated or modified version of that proposal. The State is encouraged to modify or strengthen its proposal as appropriate to increase its effectiveness in raising its seat belt use rate. An evaluation component must be included. A Continuation Application using the SF 424 must be submitted which confirms that the same effort will be continued, or indicates what changes are proposed, along with the itemized budget for the proposed effort.

B. If a State received an award based on a proposal that requested funding for several years, and the State wishes to continue the same effort, the State need only re-submit the part of its proposal (or a modified version of such), that relates to FY 2001. The State is encouraged to modify or strengthen its proposal to increase its effectiveness in raising its seat belt use rate. An evaluation component must be included. If there are any changes, additions, or deletions to the original scope of work identified and budgeted for the second year, a Continuation Application using the SF 424 must be submitted which provides a narrative explanation of the proposed differences, along with an itemized budget for the proposed effort.

C. If a State is applying for the first time, or if a State applied and did not receive an award in FY 2000, or if the State is proposing a completely new effort, the State must include in its application all of the contents listed below:

1. The application package must be submitted with OMB Standard Form 424, (Rev. 7–97 or 4–88, including 424A and 424B), Application for Federal Assistance, with the required information provided and the certified assurances included. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed breakdown of the proposed total project effort, including evaluation and reporting, (direct labor, including labor category, level of effort, and rate; direct materials, including itemized equipment; travel and transportation, including projected trips and number of people traveling; subcontracts/subgrants, with similar detail, if known; and overhead). and costs the applicant proposes to contribute or obtain from other sources in support of the projects in the innovative project plan.

2. All applications shall include a State plan detailing innovative projects to increase seat belt use rates. The State plan must provide the following information:

a. An Introduction section with a brief general description of the State's population density, any unique population characteristics, a short summary of the status of the seat belt use law in the State, and the pattern of estimated seat belt use rates for the State.

b. A Discussion section that presents the principal goals and objectives of the proposed plan and articulates the potential to increase State seat belt use rates, with supporting rationale. This section should also identify any proposed partnerships, coalitions, or leveraging of resources that will be employed as a means to implement a comprehensive and significant enforcement effort, as well as public information or educational activities. Any known barriers to implementation of the State's plan should be identified, with a discussion of how such barriers will be overcome. Relevant data based on studies of the program should be included or footnoted. Supporting documentation from concerned interests other than the applicant may be included.

Documentation of existing public and/or political support may be included (*e.g.* endorsement of the Governor, State Police or Patrol, State Association of Chiefs of Police, State Medical Society, etc).

c. A Project Description section, with a detailed description of the innovative projects to be undertaken by the State under the plan, including, for each activity:

(1) the key strategies to be employed to achieve a significant seat belt use rate increase (*e.g.,* enforcement, public information and education, training, incentive/reward efforts);

(2) the innovative features (*e.g.* new participants, expanded efforts, unique resources, design or technological innovations, reductions in cost or time, integration with existing State efforts, extraordinary community involvement); and

(3) a work plan listing milestones in chronological order to show the schedule of expected accomplishments and their target dates. For example, in a work plan based on an enforcement component, the State should provide the following information:

A description of the proposed enforcement waves (if a sTEP–type enforcement activity is included in the State's proposal), detailing

- The approximate dates when each wave will occur
- How long each wave will last (*i.e.*, duration of actual intensified enforcement)
- The number of law enforcement agencies that are expected to participate in each wave
- The approximate cumulative percentage of the State's population served by the participating *local* law enforcement agencies, and what affect this population could have on the State's seat belt use rate
- The kinds of law enforcement activities and strategies that will take place in each wave (*e.g.*, checkpoints, saturation patrols, foot patrols at selected intersections, etc.)
- The number of officers that will participate
- The number of hours, on average, each officer will participate during each wave
- The number of law enforcement contacts, on average, each officer is expected to make per hour during each wave
- The percentage of these contacts, on average, that are expected to result in a citation for a seat belt or child passenger safety violation.

A State that proposes a component other than enforcement should provide a similarly comprehensive work plan containing all relevant milestones.

d. A Personnel section, which identifies the proposed program manager, key personnel and other proposed personnel considered critical to the successful accomplishment of the activities under the State's plan. A brief description of their qualifications and respective responsibilities shall be included. The proposed level of their effort and contributions to the various activities in the plan shall also be identified. Each organization, corporation, or consultant who will work on the innovative project plan shall be identified, along with a short description of the nature of the effort or contribution and relevant experience.

e. An Evaluation section, with a description of how the State will evaluate and measure the outcomes of the activities in its innovative project plan. It is critically important that the innovative programs funded as a result of this announcement be carefully evaluated so that others may learn the relative strengths and weaknesses of the

strategies and approaches undertaken and what effects they have on seat belt use rates. The evaluation section should describe the methods for assessing actual results achieved under the plan. Outcomes can be documented in a number of ways. Increases in observed seat belt use and reductions in motor vehicle crash fatalities and injuries provide the ultimate measure of success. However, intermediate measures also may be used to measure progress. For a program based on an enforcement component, these measures may include: (i) Increases in the number of law enforcement personnel trained to enforce occupant protection laws; (ii) increased statewide participation in semi-annual enforcement mobilizations (Operation ABC); (iii) increased public perception of ongoing enforcement and public education activities; (iv) increased numbers of public and private sector partners involved in implementing the Statewide programs that support enforcement efforts; (v) the number of incentive programs, including those that complement enforcement efforts; or (vi) extent to which occupant protection enforcement activities are integrated with other State enforcement activities. Data sources should be identified, and collection and analysis approaches should be described. In particular, the State's proposal should describe how the State intends to assess the effectiveness of its project with respect to:

- Seat belt use rates
- Level of actual ticketing, other enforcement activities and activity to generate support for enforcement
- Public awareness of ticketing and other enforcement efforts
- Public support for seat belt and child passenger safety enforcement.
- Encouraging specific enforcement-related media efforts

For a program based on a component other than enforcement, the State should provide a similar level of detail in measuring progress and assessing outcomes.

f. An Options section, in which the state may choose to propose either optional tasks or activities in addition to the core set of tasks or activities, or optional levels of effort. For either type of option, the State must include a separate budget which clearly delineates the costs associated with each optional task or level of effort. For example, a State may propose a project plan that includes five week-long enforcement waves with the annual project budget, as well as an optional level of effort for an additional sixth enforcement wave and its associated costs. Doing this will allow maximum flexibility in the amount of funding awarded to a State based on funds available.

Application Review Procedures and Evaluation Criteria

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the information required by the Application Contents section of the notice. Each complete application from an eligible recipient then will be evaluated by an Evaluation Committee. Incomplete applications will be rejected without further review. This evaluation includes a process of reviewing all grant applications; submitting technical, program and budget questions about the proposals to applicants, where necessary; reviewing answers to these questions; and engaging in negotiations where appropriate. This process is expected to extend over the course of several months, and applicants may expect correspondence of this nature throughout this time period. Using this process, the applications will be evaluated in accordance with the following criteria:

1. Evaluation Criterion 1 (80% of total score): The goal(s) the State proposes to achieve, as described in its innovative project plan. The overall soundness and feasibility of the plan for achieving the goal(s), and the potential effectiveness of the proposed activities in the plan for increasing the State's seat belt use rate. The extent to which the plan details a significant and comprehensive enforcement effort or, where another approach is selected, provides evidence supporting the effectiveness of the proposed approach. Regardless of method, the goal must be to increase the State's seat belt use rate. Under this first criterion, all applications will be evaluated using the following sub-factors:

(a) Is the State's plan sound and feasible to effectively achieve the stated goal(s) for increasing the State's seat belt use rate?

(b) Does the plan detail a significant and comprehensive enforcement effort or, if another approach is proposed, is there evidence supporting the effectiveness of the approach?

(c) Are the data collection methodologies and analytical approaches adequately described in the evaluation plan and will the plan effectively measure the outcomes of the proposed activities?

2. Evaluation Criterion 2 (20% of total score): The organizational resources the State will draw upon, and how the State will provide the program management capability and personnel expertise to successfully perform the activities in its innovative project plan. The adequacy of the proposed personnel (including subcontractor and subgrantee personnel) to successfully perform the proposed activities, including qualifications and experience, the various disciplines represented and the relative level of effort proposed for the professional, technical, and support staff, will be considered.

Each application will be reviewed and rated in accordance with the evaluation criteria outlined above. If an application receives a low rating, NHTSA may eliminate it from further consideration for award without discussions with an offeror. For applications that are not eliminated during this initial review, NHTSA may suggest revisions as a condition of further consideration, during the negotiation process described above, to ensure the most efficient and effective performance consistent with the objectives of achieving increased State seat belt use rates. It is anticipated that awards will be made in January 2001.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award all requested amounts to all meritorious applicants, NHTSA may consider the following special award factors in the award decision:

1. Every effort will be made to provide grants to a diverse group of States representing a broad range of geographic, demographic, and use rate characteristics. Thus, preference may be given to an applicant that fits the need for such diversity.

2. Preference may be given to an applicant on the basis that its application is effectively integrated and coordinated with other ongoing efforts in the State, resulting in additional opportunity for immediately increasing seat belt use rates. This could include proposed cost-sharing strategies, and/or the use of other federal, State, local and private funding sources to complement those available under this announcement.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a Quarterly Progress Reports should include a summary of the previous quarter's enforcement and other activities and accomplishments, significant problems encountered or anticipated, a brief itemization of expenditures made during the quarter, and proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report.

b. Draft Final Report: The grantee shall prepare a Draft Final Report that includes a complete description of the innovative projects conducted, including partners, overall program implementation, evaluation methodology and findings from the program evaluation. In terms of information transfer, it is important to know what worked and what did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

c. Final Report: The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR :

—A camera ready version of the document as printed.

—A copy, on appropriate media (diskette, Syquest disk, etc.), of the document in the original program format that was used for the printing process.

Note: Some documents require several different original program languages (e.g., PageMaker was the program format for the general layout and design and Power point was used for charts and yet another was used for photographs, etc.). Each of these component parts should be available on disk, properly labeled with the program format and the file names. For example, Power point files should be clearly identified by both a descriptive name and file name (e.g., 1994 Fatalities—chart1.ppt).

—A complete version of the assembled document in portable document format (PDF) for placement of the report on the world wide web (WWW). This will be a file usually created with the Adobe Exchange program of the complete assembled document in the PDF format that will actually be placed on the WWW. The document would be completely assembled with all colors, charts, side bars, photographs, and graphics. This can be delivered to NHTSA on a standard 1.44 diskette (for small documents) or on any appropriate archival media (for large documents) such as a CD ROM, TR–1 Mini cartridge, Syquest disk, etc.

—Four additional hard copies of the final document.

3. During the effective performance period of grants awarded as a result of this announcement, the grant shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements, dated July 1995.

Issued on: May 19, 2000.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

Appendix: Strategies That Have Proven Effective in Increasing Seat Belt Use

Seat belts, when properly used, are 45 percent effective in preventing deaths in potentially fatal crashes and 50 percent effective in preventing serious injuries. No other safety device has as much potential for immediately preventing deaths and injuries in motor vehicle crashes. The current level of seat belt use across the nation prevents more than 9,500 deaths and well over 200,000 injuries annually. Through 1997, more than 100,000 deaths and an estimated 2.5 million serious injuries have been prevented by seat belt use.

But, seat belt use rates and the resulting savings could be much greater. As of 1999, the average use rate among States in the U.S. was still well below the goal of 85 percent announced by the President for the year 2000 and at least a dozen States have use rates below 60 percent. On the other hand, use rates of 85–95 percent are a reality in most developed nations with seat belt use laws, and at least six U.S. States and the District of Columbia achieved use rates greater than 80 percent in 1999. A national use rate of 90 percent (the President's goal for 2005), among front seat occupants of all passenger vehicles, would result in the prevention of an additional 5,500 deaths and 130,000 serious injuries annually. This would translate into a $9 billion reduction in societal costs, including $356 million for Medicare and Medicaid.

Effective Enforcement Based Strategies

The history of efforts to increase seat belt use in the U.S. and in Canada suggests that highly visible enforcement of a strong seat belt law must be at the core of any effective program. No State has ever achieved a high seat belt use rate without such a component. Most States that have achieved rates greater than 70 percent have also had laws that allow for primary (standard) enforcement procedures.

Canada currently has a national seat belt use rate well above 90 percent. Nearly every province first attempted to increase seat belt use through voluntary approaches involving public information and education. These efforts were effective in achieving only very modest usage rates (no higher than 30 percent). Even the enactment of primary enforcement seat belt laws, without intense and highly visible enforcement, generally was not sufficient to achieve usage rates greater than 60–65 percent. By 1985, it became clear to Canadian and provincial officials that additional efforts would be needed to achieve levels of 80 percent or greater. These efforts, mounted from 1985 through 1995, centered around highly publicized "waves" of enforcement, a technique that had already been shown to increase seat belt use in Elmira, New York in 1985. When these procedures were implemented in the Canadian provinces, seat belt use generally increased from about 60 percent to well over 80 percent, within a period of 3–5 years.

The U.S. experience has been similar. Prior to 1980, many attempts were made to increase seat belt use through voluntary, persuasive, or educational methods. Most of these efforts were initiated at local, county, or state levels. Nationally, seat belt use remained very low, reaching only about 11 percent. From 1980–1984, efforts to increase seat belt use emphasized networking with various public and private groups to implement public education programs, incentives, and seat belt use policies. While there were some small gains documented in individual organizations, these efforts did not result in any significant increases in seat belt use in any large city or in any State. By the end of 1984, the national usage rate, as measured by a 19-city observational survey, was only about 15 percent.

In 1984, New York enacted the first mandatory seat belt use law and, from 1985 to 1990, at least 37 other States enacted such laws. Most of these laws were secondary enforcement laws that required an officer to observe another traffic violation before stopping and citing a driver for failure to wear a seat belt. During this period of time, the 19-city index of seat belt use increased from about 15 percent to nearly 50 percent. However, as was the case in Canada, the enactment of laws, by itself, was not sufficient to achieve high usage rates.

The Canadian successes using periodic, highly visible "waves" of enforcement, as well as scores of such efforts implemented in local jurisdictions in the U.S., prompted NHTSA to implement Operation Buckle Down (also called the "70 by '92" Program) in 1991. This two-year program focused on Special Traffic Enforcement Programs (STEPs) to increase seat belt use. It was followed by a national usage rate increase from about 53 percent in 1990 to 62 percent by the end of 1992 (as measured by a weighted aggregate of State surveys). Neither the level of enforcement nor its public visibility was uniform in every State. Had these "waves" of enforcement been implemented in a more uniform fashion in every State, the impact likely would have been much greater.

In order to demonstrate the potential of periodic, highly visible enforcement in a more controlled environment, the State of North Carolina implemented its Click-It or Ticket program in 1993. In this program,

waves of coordinated and highly publicized enforcement efforts (i.e., checkpoints) were implemented in every county. As a result, seat belt use increased statewide, from 65 percent to over 80 percent, in just a few months. This program provided the clearest possible evidence to demonstrate the potential of highly visible enforcement to increase seat belt use in a large jurisdiction (i.e. an entire State).

On the west coast, the State of California had expended much effort over the years to enforce its secondary enforcement law. These efforts were successful in increasing the statewide usage rate to about 70 percent, where it plateaued. In 1993, California became the first State to upgrade its seat belt law from secondary to primary enforcement. As a result, the rate of seat belt usage increased by 13 percentage points (from 70 percent to 83 percent) in the first year after the law was upgraded.

The California success was a major factor in rekindling interest among safety officials in upgrading their secondary enforcement laws as a way to increase seat belt use. In 1995, Louisiana became the second State to upgrade from secondary to primary enforcement. As a result, it experienced an 18 percentage point increase (from 50 percent to 68 percent) over the next two years. Next, Georgia upgraded its law and experienced a 15 percentage point increase (from 53 percent to 68 percent). After mounting a highly visible enforcement effort in 1998 (Operation Strap 'N Snap), Georgia's usage increased by another 10 percentage points. Similarly, Maryland upgraded its seat belt law in 1997, immediately mounted a two-month enforcement effort, and experienced a 13 percentage point increase in usage. In 1998, the District of Columbia reported a 24 percentage point gain in usage (from 58% to 82%) after enacting one of the strongest seat belt use laws in the nation and implementing several waves of highly visible enforcement. Following a 1999 three-week enforcement effort in Elmira, New York, belt use increased to 90 percent. Taken together, the experiences of North Carolina, California, Louisiana, Georgia, Maryland, the District of Columbia and most recently Elmira, New York have clearly demonstrated that highly visible enforcement of strong laws has tremendous potential for increasing seat belt use rates.

Visible enforcement of strong laws also appears to be an essential component of any effective program to increase the use of child safety seats. This is important since early use of child safety seats contributes to the later use of seat belts by children and young adults. There is also a strong relationship between child safety seat use. Studies conducted in several States have found that child safety seat use is nearly three times as high when a driver is buckled up as when a driver is not buckled up. Thus, efforts to persuade adults to buckle up may be the single most important way to get young children protected. However, with child safety seats, correct use is a major concern and the training of law enforcement officers, parents, and advocates is needed to minimize incorrect use and to ensure age-appropriate graduation to seat belts among young children who have outgrown safety seats. Clearly, efforts to increase the use of seat belts and child safety seats are interdependent and complementary.

Prior to the 1977 passage of the Child Passenger Safety (CPS) law in Tennessee, very little progress was made to get young children buckled up. Nationally, child safety seat use was less than 15 percent at the time. However, the Tennessee law was followed by the enactment of primary enforcement CPS laws in all States by 1985. This wave of legislation resulted in a major increase in child restraint use. By 1990, usage was estimated to be above 80 percent for infants and about 60 percent for toddlers.

Unfortunately, problems such as child seat misuse, premature graduation to seat belt use that skips the important step of booster seat use, and variation in age coverage continue to exist. Another issue to emerge has been the danger posed by passenger side air bags to unrestrained and improperly restrained children. This has led to NHTSA's publication of a final rule for advanced air bags and a new emphasis on programs to increase the proper use of child safety seats and revitalized law enforcement efforts in this area.

Obstacles to Increasing Seat Belt Use

Over the years, all of the States and many public and private sector organizations have been active participants in efforts to increase seat belt use. Public information and education efforts have been the dominant programs funded over the past two decades. Many States have identified major obstacles to enacting primary seat belt laws or implementing highly visible enforcement programs, even though such programs have been shown to result in high usage rates. Most frequently, State (and local) officials have identified a lack of resources for law enforcement as the single greatest barrier to implementing more intense, highly visible enforcement efforts. This lack of resources extends to funding, human resources, and public information support to conduct such campaigns. Over the past five years, many officials have indicated that, if they had the kind of resources provided to States like North Carolina for the Click It or Ticket program, they too would be able to mount similar programs and achieve similar results. The significant amount of funding that has become available under this grant program, combined with the additional new resources available under other TEA–21 programs, should drastically reduce this obstacle.

The second most frequently mentioned obstacle to mounting highly visible enforcement programs is a lack of support from key State and local leaders. Experience with the national mobilizations (Operation ABC) and with jurisdictions such as North Carolina, Georgia, Maryland and the District of Columbia suggests that this obstacle can be overcome to a significant degree by proactive efforts to gain the understanding, support and endorsement of various public and private organizations. Including a broad spectrum of such organizations as coalition members in the State's occupant protection program can be very effective in obtaining the commitment of key persons (e.g., the governor) and in gaining the support that is essential for sustained, highly visible enforcement efforts. Much innovation can be demonstrated in the way of developing public and official support for strong enforcement efforts.

Another obstacle frequently voiced by State and local enforcement officials is a lack of judicial and prosecutorial support for the enforcement of seat belt and child passenger safety laws. It has frequently been pointed out that an enforcement program can be undermined quickly if prosecutors fail to prosecute seat belt and child safety seat violations and judges repeatedly dismiss such cases. This can be overcome to some extent by educating prosecutors and judges across the State and urging them to value occupant protection laws as highly as any other traffic safety law.

Buckle Up America Campaign

In October 1997, the Buckle Up America (BUA) Campaign established ambitious national goals: (a) to increase seat belt use to 85 percent and reduce child-related fatalities (0–4 years) by 15 percent by the year 2000; and (b) to increase seat belt use to 90 percent and reduce child-related fatalities by 25 percent by the year 2005. This Campaign advocates a four part strategy: (1) building public-private partnerships; (2) enacting strong legislation; (3) maintaining high visibility law enforcement; (4) and conducting effective public education. Central to this Campaign's success is the encouragement of primary seat belt use laws and the implementation of two major enforcement mobilizations each year (Memorial Day and Thanksgiving holidays). During the November 1999 mobilization conducted throughout the week surrounding Thanksgiving, over 7,100 police agencies from all 50 states participated in Operation ABC.

The BUA Campaign and the efforts of the Air Bag and Seat Belt Safety Campaign (including Operation ABC) provide a useful framework for the implementation of this grant program. They provide a blueprint for projects that States may wish to implement, using funds to be made available in accordance with this notice. Conversely, this grant program provides an unprecedented opportunity to achieve the ambitious goals established under the BUA Campaign.

[FR Doc. 00–13099 Filed 5–24–00; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the eighteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 3–13, 2000 in Geneva, Switzerland.

DATES: June 21, 2000 10 a.m.–1 p.m., Room 6244–6248; July 19, 2000, 10 a.m.–1 p.m., Room 6244–6248.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, Room 6244–6248, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the eighteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the twenty-first Session of the United Nations Committee of Experts on the Transport of Dangerous Goods (UNSCOE) which is scheduled for December 4–13, 2000 in Geneva, Switzerland. Topics to be covered during the public meetings include: (1) Global harmonization of classification criteria, (2) Reformatting the UN Recommendations into a model rule, (3) Criteria for Environmentally Hazardous Substances, (4) Intermodal portable tank requirements including requirements for the transport of solids in portable tanks, (5) Requirements applicable to small quantities of hazardous materials in transport (limited quantities) including package marking requirements, package quantity limits and requirements applicable to consumer commodities, (6) Harmonized requirements for compress gas cylinders, (7) Classification of individual substances, (8) Requirements for bulk and non-bulk packagings used to transport hazardous materials and (9) Hazard communication requirements including harmonized shipping paper requirements.

The public is invited to attend without prior notification.

Documents

Copies of documents for the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/dgscomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at http://www.unece.org/trans/danger/meetings.htm#ST/SG. These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm. RSPA's site also provides information regarding the UNSCOE and related matters such as a summary of decisions taken at the 17th session of the UNSCOE, meeting dates and a summary of the primary topics which the UNSCOE plans to address in the 1999–2000 biennium.

Issued in Washington, DC, on May 22, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 00–13183 Filed 5–24–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33876]

State of Georgia, Department of Transportation—Acquisition Exemption—Georgia Southwestern Railroad, Inc.

The State of Georgia, Department of Transportation (GDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Georgia Southwestern Railroad, Inc. (GSWR) certain railroad assets, including approximately 71.13 miles of rail line extending between Rochelle, GA (milepost 644.00), and a point near Preston, GA (milepost 713.00), and between Omaha, GA (milepost 753.00), and Mahrt, AL (milepost 755.13).[1]

The transaction is scheduled to take place as soon as possible after the May 22, 2000 effective date of the exemption.

If the notice contains false or misleading information, the exemption is void *ab initio*.[2] Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33876, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Luke Cousins, State of Georgia, Department of Transportation, #2 Capitol Square, S.W., Atlanta, GA 30334–1002.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 18, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–13171 Filed 5–24–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

[1] The transaction does not include the right or obligation to conduct common carrier freight operations. Heart of Georgia Railroad, Inc. (HOG) acquired the exclusive rail freight easement over the rail line. *See Heart of Georgia Railroad, Inc.—Acquisition and Operation Exemption—State of Georgia and Georgia Southwestern Railroad, Inc.*, STB Finance Docket No. 33867 (STB served May 4, 2000). HOG currently conducts and will continue to conduct common carrier freight operations over the rail line. Neither GDOT nor GSWR will have a common carrier obligation to provide freight services when this transaction is completed.

[2] A motion to dismiss has been filed in this proceeding. The motion will be addressed in a subsequent Board decision.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0205.
Form Number: ATF F 5110.40.
Type of Review: Extension.
Title: Distilled Spirits Records and Monthly Report of Production Operations.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,600 hours.

OMB Number: 1512–0247.
Recordkeeping Requirement ID Number: ATF REC 5000/2.
Type of Review: Extension.
Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.
Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 50.
Estimated Burden Hours Per Recordkeeper: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 325 hours.

OMB Number: 1512–0292.
Recordkeeping Requirement ID Number: ATF REC 5120/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Wine.
Description: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,650.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.

OMB Number: 1512–0335.
Recordkeeping Requirement ID Number: ATF REC 5150/4.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol.
Description: Tax-free alcohol is used for nonbeverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. Protect tax revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 4,444.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 2,222 hours.

OMB Number: 1512–0512.
Form Number: None.
Type of Review: Extension.
Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.
Description: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes by electronic fund transfer must furnish a written notice upon election and discontinuance. Tax revenue will be protected.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0540.
Form Number: ATF REC 5120/11.
Type of Review: Extension.
Title: Information Collection in Support of Small Producer's Wine Tax Credit.
Description: ATF needs this information to insure proper tax credit. The information is used by taxpayers in preparing their returns and by ATF to verify tax computation. Recordkeepers are wine producers who want to transfer their credit to warehouse operators and the transferees who take such credit.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 280.
Estimated Burden Hours Per Recordkeeper: None.
Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 00–13116 Filed 5–24–00; 8:45 am]
BILLING CODE 4810–31–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 19, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0038.
Form Number: ATF F 5030.6.
Type of Review: Extension.
Title: Authorization to Furnish Financial Information and Certificate of Compliance.
Description: The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. ATF F 5030.6 serves as both a customer authorization for ATF to receive information and as the required certification to the financial institution.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1512–0059.

Form Number: ATF F 5120.29.

Type of Review: Extension.

Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine.

Description: ATF F 5120.29 is used to determine the classification of wines for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions to the labeling and manufacture. The form is also used to audit a product.

Respondents: Business or other for–profit.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1512–0082.

Form Number: ATF F 1582–A (5120.24).

Type of Review: Extension.

Title: Drawback on Wines Exported.

Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U. S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 900.

Estimated Burden Hours Per Respondent: 1 hour, 7 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,025 hours.

OMB Number: 1512–0131.

Form Number: ATF F 5400.14/ 5400.15, Part III.

Type of Review: Extension.

Title: Renewal of Explosives License or Permit.

Description: This information collection activity is used for the renewal of explosives licenses and permits. This short renewal form is used in lieu of a more detailed application.

Respondents: Business or other for–profit.

Estimated Number of Respondents: 2,500.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 825 hours.

OMB Number: 1512–0554.

Form Number: ATF F 5000.28T.

Type of Review: Extension.

Title: 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

Description: All persons who hold for sale any cigarettes on January 1, 2000, must take an inventory. A floor stocks tax has been imposed on cigarettes. The recordkeeping and the tax return for this tax are prescribed by ATF.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 400,000.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: Other (One-time).

Estimated Total Recordkeeping Burden: 1,532,000 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–13117 Filed 5–24–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0025.

Form Number: IRS Form 712.

Type of Review: Revision.

Title: Life Insurance Statement.

Description: Form 712 is used to establish the value of life insurance policies for estate and gift tax purposes. The tax is based on the value of these policies. The form is completed by life insurance companies.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 60,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	18 hr., 11 min.
Learning about the law or the form.	6 min.
Preparing and sending the form to the IRS.	23 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 1,120,800 hours.

OMB Number: 1545–0257.

Form Number: IRS Forms 8109, 8109-B, and 8109-C.

Type of Review: Extension.

Title: Federal Tax Deposits (8109 and 8109-B); and FTD Address Change (8109-C).

Description: Federal Tax Deposit Coupons are used to deposit certain types of taxes at authorized depositaries. Coupons are sent to the IRS Centers for crediting to taxpayers' accounts. Data is used by the IRS to make the credit and to verify tax deposits claimed on the returns. The FTD Address change is used to change the address on the FTD coupons. All taxpayers required to make deposits are affected.

Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 9,300,700.

Estimated Burden Hours Per Respondent: 2 minutes.

Frequency of Response: On occasion, Weekly, Monthly, Other (semi-weekly, monthly).

Estimated Total Reporting Burden: 1,841,607 hours.

OMB Number: 1545–1091.

Form Number: IRS Form 8810.

Type of Review: Extension.

Title: Corporate Passive Activity Loss or Credit Limitations.

Description: Under section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 100,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	26 hr., 19 min.
Learning about the law or the form.	5 hr., 7 min.
Preparing and sending the form to the IRS.	5 hr., 43 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,708,000 hours.

OMB Number: 1545–1683.

Form Number: IRS Form 56-A (formerly Forms 12575 and 12575-A).

Type of Review: Revision.

Title: Notice Concerning Fiduciary Relationship—Illinois Type Land Trust.

Description: The data collected on the form provides trustees of Illinois Land Trusts a convenient method of reporting information related to creating, changing, and closing such trusts.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 10,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	40 min.
Learning about the law or the form.	10 min.
Preparing the form	21 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 15,100 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–13118 Filed 5–24–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; Comment Request

May 16, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0120.

Form Number: IRS Form 1099–G.

Type of Review: Extension.

Title: Certain Government and Qualified State Tuition Program Payments.

Description: Form 1099–G is used by governments (primarily state and local) to report to the IRS (and notify recipients of) certain payments (*e.g.,* unemployment compensation and income tax refunds). IRS uses the information to insure that the income is being properly reported by the recipients on their returns.

Respondents: Federal Government, State, Local or Tribal Government

Estimated Number of Respondents: 2,900.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 11,149,325 hours.

OMB Number: 1545–0190.

Form Number: IRS Form 4876–A.

Type of Review: Extension.

Title: Election To Be Treated as an Interest Charge DISC.

Description: A domestic corporations and its shareholders must elect to be an interest charge domestic international sales corporation (IC–DISC). Form 4876–A I used to make the election. IRS uses the information to determine if the corporation qualifies to be an IC–DISC.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hr., 4 min.
Learning about the law or the form—1 hr., 47 min.
Preparing and sending the form to the IRS—1 hr., 54 min.
Frequency of Response: Other (One-Time Election).
Estimated Total Reporting/Recordkeeping Burden: 5,760 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–13119 Filed 5–24–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 16, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0205.
Form Number: IRS Form 5452.
Type of Review: Extension.
Title: Corporate Report of Nondividend Distribution.
Description: Form 5452 is used by corporations to report their nontaxable distributions as required Internal Revenue Code (IRC) 6042(d)(2). The information is used IRS to verify that the distributions are nontaxable as claimed.
Respondents: Business of other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 1,700.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping: 28 hr., 13 min.
Learning about the law or the form: 58 min.
Preparing the form: 2 hr., 24 min.
Copying, assembling, and sending the form to the IRS: 16 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 54,145 hours.
OMB Number: 1545–0902.
Form Number: IRS Forms 8288 and 8288–A.
Type of Review: Extension.
Title: U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288); and Statement of Withholding on Dispositions by Foreign Persons of U.S. Real Property Interests (Form 8288–A).
Description: Form 8288 is used by the withholding agent to report and transmit the withholding to IRS. Form 8288–A is used to validate the withholding and to return a copy to the transferor for his/her use in filing a tax return.
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents/Recordkeepers: 4,918.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8288	Form 8288–A
Recordkeeping	5 hr., 16 min.	2 hr., 52 min.
Learning about the law or the form	5 hr., 8 min.	30 min.
Preparing and sending the form to the IRS	6 hr., 39 min.	34 min.

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 124,607 hours.
OMB Number: 1545–1257.
Form Number: IRS Form 8827.
Type of Review: Extension.
Title: Credit for Prior Year Minimum Tax—Corporation.
Description: Section 53(d), as revised, allows corporations a minimum tax credit based on the full amount of alternative minimum tax incurred in tax years beginning after 1989, or a carryforward for use in a future year.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents: 25,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 25,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–13120 Filed 5–24–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 18, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 26, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0195.
Form Number: IRS Form 5213.
Type of Review: Extension.
Title: Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.

Description: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.

Respondents: Business or other for-profit, Individual or households.

Estimated Number of Respondents/ Recordkeepers: 10,730.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form.	10 min.
Preparing the form	10 min.
Copying, assembling, and sending the form to the IRS.	20 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 8,262 hours.

OMB Number: 1545–0495.

Form Number: IRS Form 4506–A.

Type of Review: Extension.

Title: Request for Public Inspection or Copy of Exempt Organization IRS Form.

Description: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form	3 min.
Preparing the form	13 min.
Copying, assembling, and sending the form to the IRS.	14 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 12,000 hours.

OMB Number: 1545–0865.

Form Number: IRS Form 8264.

Type of Review: Extension.

Title: Application for Registration of a Tax Shelter.

Description: Organizers of certain tax shelters are required to register them with the IRS using Form 8264. Other persons may have to register the tax shelter if the organizer doesn't. We use the information to five the tax shelter a registration number. Sellers of interests in the tax shelter furnish the number of investors who report the number on their tax returns.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	31 hr., 49 min.
Learning about the law or the form	1 hr., 17 min.
Preparing, copying, assembling, and sending the form to the IRS.	1 hr., 52 min.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 34,960 hours.

OMB Number: 1545–0881.

Form Number: IRS Form 8271.

Type of Review: Extension.

Title: Investor Reporting of Tax Shelter Registration Number.

Description: All persons who are claiming a deduction, loss, credit, or other tax benefit, or reporting any income on their returns from a tax shelter required to be registered (under IRC 6111) must report the tax shelter registration number on that return. Form 8271 is used for this purpose. We use the information to associate claimed benefits with the tax shelter and to determine if any compliance actions are needed.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 297,500.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 min.
Learning about the law or the form	8 min.
Preparing the form	17 min.
Copying, assembling, and sending the form to the IRS.	10 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 205,275 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–13121 Filed 5–24–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, and Public Law 92–463, (Committee) will be held from Monday, June 5, 2000 to Wednesday, June 7, 2000, in Washington, DC. The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services to minority veterans; to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene to room 830, VA Central Office Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 a.m. to 5:00 p.m. each day. On June 5, the Committee will focus on such health care issues as minority health—a global assessment, medical research, Board of Veterans Appeals (BVA) operations, and Minority and Veterans Business contacting. On Tuesday, June 6, the Committee will concentrate its effort on a report of a Veterans Identity Study, Hepatitis C infections, the cardiac care program evaluation, the Veterans' Benefits Administration's Road Map to Excellence and National Cemetery operations. The Committee will work in Subcommittees in the afternoon session. On Wednesday, June 7, the Committee will examine several diversity training programs and will begin drafting its annual report for Fiscal Year 2000.

These sessions will be open to the public. In order to notify the VA Security Office of the number of visitors to expect, those wishing to attend the meeting should contact Mr. Anthony T.

Hawkins, Department of Veterans Affairs, at (202) 273–6708, before June 1, 2000. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: May 16, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

FR Doc. 00–13167 Filed 5–24–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a Meeting of the Advisory Committee on the Readjustment of Veterans will be held June 15 and 16, 2000. This will be a regularly scheduled meeting for the purpose of reviewing VA services of veterans, and to formulate Committee recommendations and objectives. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for Thursday, June 15, will include reviews of Veterans Health Administration (VHA) special emphasis programs for prosthetics, environmental agents and post-traumatic stress disorder. The agenda for both days will also include strategic planning sessions to formulate goals and objectives for a Committee field visit to VA facilities to be conducted later in the year.

On Friday, June 16, the Committee will review Veterans Benefits Administration (VBA) programs related to PTSD compensation, vocational rehabilitation and counseling, and transition assistance.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting may contact Alfonso R. Batres, Chief Readjustment Counseling Officer, Department of Veterans Affairs Headquarters Office at (202) 273–8967.

Dated: May 16, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–13168 Filed 5–24–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 65, No. 102
Wednesday, May 25, 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.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FPMR Amendment H–205]

RIN 3090–AF39

Disposition of Excess Personal Property

Correction

In rule document 00–11921 beginning on page 31218 in the issue of Tuesday, May 16, 2000, make the following correction:

§102–36.125 [Corrected]

On pages 31223 and 31224, in §102–36.125(b), the table should read as set forth:

Type of property	GSA region	Location
Aircraft	9 FBP	San Francisco, CA 94102.
Firearms	7 FP–8	Denver, CO 80225.
Foreign Gifts	FBP	Washington, DC 20406.
Forfeited Property	3 FP	Washington, DC 20407.
Standard Forms	7 FMP	Ft. Worth, TX 76102.
Vessels, civilian	4 FD	Atlanta, GA 30365.
Vessels, DOD	3 FPD	Philadelphia, PA 19107.

[FR Doc. C0–11921 Filed 5–24–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
May 25, 2000

Part II

Department of the Interior

Fish and Wildlife Service

National Wildlife Refuge System Administration Act as Amended by the National Wildlife Refuge System Improvement Act of 1997, Refuge Planning Policy; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Refuge Planning Policy Pursuant to the National Wildlife Refuge System Administration Act as Amended by the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) establishes requirements and guidance for National Wildlife Refuge System planning, including Comprehensive Conservation Plans (CCPs) and step-down management plans. This policy, which incorporates the CCP provisions of the National Wildlife Refuge System Administration Act, as amended, replaces Part 602 Chapters 1, 2, and 3 of the Fish and Wildlife Service Manual. The new policy will appear as Part 602 Chapters 1, 3, and 4.

Our policy for managing units of the National Wildlife Refuge System (Refuge System) is that we will manage all refuges in accordance with an approved CCP which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. We also may require step-down management plans to provide additional guidance for meeting CCP goals and objectives and to describe strategies and implementation schedules. Each plan will be consistent with principles of sound fish and wildlife management, available science, legal mandates, and our other policies, guidelines, and planning documents. We will prepare refuge plans that, above all else, ensure that wildlife comes first on national wildlife refuges.

DATES: This policy is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: We will send a copy of the Fish and Wildlife Service Manual chapters on Refuge System planning to those who submitted comments on the draft policy and to anyone who would like to receive them. Please contact Liz Bellantoni, Refuge Planning Coordinator, Division of Refuges, U.S. Fish and Wildlife Service, at (703) 358-2422 if you would like to receive a copy. In addition, these chapters will be available on the Refuge System web site (http://refuges.fws.gov [select link to "Manual/Policies: Refuge Planning Policy']).

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act), provides an "Organic Act" for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the principal mission of the Refuge System; provides guidance to the Secretary of the Interior for management of the Refuge System; reinforces the importance of comprehensive planning for all units of the Refuge System; and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the Refuge System.

Planning and the Refuge Administration Act

Except for those refuges in Alaska (which are subject to the refuge planning provisions of the Alaska National Interest Lands Conservation Act [ANILCA]), the Refuge Administration Act requires that we manage all national wildlife refuges according to an approved CCP. We will prepare a CCP by October 2012 for each refuge in existence at the time of passage of the National Wildlife Refuge System Improvement Act. For refuges established after passage of this Act, we will prepare CCPs when we staff the refuge and acquire a land base sufficient to achieve refuge purposes, but no later than 15 years after establishment of the refuge. The Refuge Administration Act also requires that we provide an opportunity for active public involvement during the preparation and revision of CCPs. These plans will guide management decisions and establish strategies for achieving the mission of the Refuge System and the purposes of each refuge unit.

Purpose of This Policy

This policy establishes requirements and guidance for National Wildlife Refuge System planning, including CCPs and step-down management plans, and ensures that planning efforts comply with the provisions of the Refuge Administration Act.

Response to Comments Received

On August 13, 1999, we published a notice in the **Federal Register** (64 FR 44368) to establish requirements and guidance for Refuge System planning, including CCPs and step-down management plans. During the 60-day comment period, we received 41 comments from the following sources: non-government organizations (16), State agencies (14), Service employees (5), other Federal agencies (1), private citizens (4), and commercial businesses (1). Key points raised by the public and addressed in the final policy include:

- placing greater emphasis on wildlife first and elevating our commitment to maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System as mandated by the National Wildlife Refuge System Improvement Act of 1997;
- basing management decisions on a thorough assessment of available science;
- defining our relationship with States and other agencies and their programs;
- identifying biological information necessary for planning and management;
- clarifying under what conditions we should revise a CCP;
- expediting or further clarifying our planning process;
- describing the relationship of CCPs to refuge purposes and Refuge System mission; and
- addressing issues related to recreation and public use.

We reviewed and considered all substantive comments received. Following are public comments and our responses grouped under eight broad headings:

I. Placing Greater Emphasis on Wildlife First and Elevating Our Commitment to Maintain and, Where Appropriate, Restore the Ecological Integrity of Each Refuge and the Refuge System as Mandated by the National Wildlife Refuge System Improvement Act of 1997

Comment: The Service's drafting of the proposed planning policy is pursuant to the mandates contained in the National Wildlife Refuge System Improvement Act of 1997. The first and foremost goal of the Refuge Improvement Act is to ensure that wildlife conservation is the principal mission of the Refuge System. Although the Refuge Improvement Act established a hierarchy of appropriate and compatible wildlife-dependent uses of a refuge, wildlife conservation is paramount and every aspect of the Service's planning process must reflect this principal goal. The planning process should be preceded by, and indeed founded upon, first establishing the wildlife and ecological priorities of

the refuge. Then the plan should consider certain public uses deemed compatible with the refuge purpose, the Refuge System mission, and the particular conditions of the refuge. This is particularly important since the CCP process includes the drafting or recertification of compatibility determinations.

Response: We have strengthened Section 1.5, "What are the goals of refuge planning?," by adding as the very first goal, "A. To ensure that wildlife comes first in the National Wildlife Refuge System." We have strengthened Section 3.3 (formerly Section 2.3), "What are our goals for Comprehensive Conservation Planning?," by revising goal A. to read: "To ensure that wildlife comes first in the National Wildlife Refuge System and that we manage each refuge to help fulfill the mission of the Refuge System; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; as well as achieve the specific purposes for which the refuge was established."

Comment: The draft planning policy should be revised each and every place where it pledges allegiance to the mission of the Refuge System and purposes of the individual refuges in order to also ensure that the planning process will advance the maintenance and restoration of biological integrity, diversity, and environmental health. For example, Section 602 FW 1.3 should be modified to state that, "We will manage all refuges in accordance with an approved CCP which, when implemented, will achieve refuge purposes, fulfill the System mission, maintain and restore biological integrity, diversity, and environmental health, and meet all other relevant mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends * * *."

Response: We have incorporated similar language into the final policy. We are now using the term "ecological integrity" in lieu of the phrase "biological integrity, diversity, and environmental health."

Comment: Reword Section 602 FW 1.5 B to state that the goal of refuge planning is "To help ensure that we restore and maintain the biological integrity, diversity, and environmental health of each refuge and the Refuge System, and contribute to the conservation of the structure and function of the ecosystems of the United States."

Response: We have revised the text with modification. See 602 FW 1.5 C.

Comment: Reword Section 602 FW 1.6 B to define the term CCP as "A document that describes the desired future conditions of the refuge and provides long-range guidance and management direction to accomplish the purposes of the refuge, fulfill the mission of the System, restore and maintain the biological integrity, diversity, and environmental health of each refuge and the Refuge System, and meet other relevant mandates."

Response: We have revised the text with modification. See 602 FW 1.6 E.

Comment: Amend Section 602 FW 1.7 D, 2.1, 2.3 B, 2.4 A, 2.4 C (1)(b), (c), and (d)(ii), 2.4 C (4), 2.4 C (4)(d), and 2.4 C (7) to highlight the restoration and maintenance of biological integrity, diversity, and environmental health as a major feature of CCPs.

Response: We have amended the text where appropriate. See Section 602 FW 1.7 D, 3.1 (formerly 2.1), 3.3 A (formerly 2.3 B), 3.4 A (formerly 2.4 A), and 3.4 C (1)(d) (formerly 2.4 C (1)(c)).

Comment: Reword Section 602 FW 2.4 C (1)(f) to require that CCPs set goals for appropriate indices of biological integrity, diversity, and environmental health.

Response: We have incorporated similar language into the final policy. See 602 FW 3.4 C (1)(g).

Comment: Reword Section 602 FW 2.4 C (1)(g) to require that CCPs identify additional problems, *e.g.*, "Identify any significant problems that may adversely affect the population and habitats of fish, wildlife, and plants (including candidate, threatened, and endangered species), the biological integrity, diversity, and environmental health or the wilderness characteristics within the planning unit, and the actions necessary to correct or mitigate such problems."

Response: We have addressed the need to identify and describe these problems in Section 3.4 C (1)(e)(x) and (xii) (formerly 2.4 C (1)(d)).

Comment: Reword Section 2.4 C (4)(d) to require that CCPs set objectives for appropriate indices of biological integrity, diversity, and environmental health.

Response: We believe this is more appropriately done at the goal-setting level and have revised the text in Section 3.4 C (1)(g) (formerly 2.4 C (1)(f)) accordingly.

Comment: The policies that guide the refuge planning process must, above all else, ensure that CCPs put wildlife first. The draft planning policy makes an important start towards accomplishing this end, but should be modified in several places to drive home this point more explicitly and emphatically.

Response: We have modified the final policy in various places to emphasize that we will prepare CCPs that, above all else, ensure that wildlife comes first on national wildlife refuges. See 602 FW 1.3, 1.4 A, and 1.5 A, and 602 FW 3.3 A.

Comment: Existing language in the draft policy regarding the proposed action is inappropriately and inexplicably weak. Section 602 FW 2.4 C (4)(c) should be reworded to reflect that the planning team shall select as the proposed action in each CCP the alternative that best achieves planning unit purposes, vision and goals; fulfills the Refuge System mission; maintains and restores biological integrity, diversity, and environmental health; addresses the significant issues and relevant mandates, and is consistent with principles of sound fish and wildlife management.

Response: We strengthened the language in the final policy as suggested, with minor modification. See 602 FW 3.4 C (4)(c).

Comment: Section 2.4 C (1)(c) should be modified to place the emphasis on meeting refuge purposes, Refuge System mission, and ecological integrity.

Response: We made a related change in the final policy. See 602 FW 3.4 C (1)(d).

Comment: The planning policy appropriately makes conservation of biological diversity a major goal of refuge planning (Section 602 FW 1.5 B). What is lacking however, is a simple explanation of what this means. The Service should clarify within this section or in another appropriate place in the policy, that it intends to adopt a regional/ecological approach to conserving biological diversity. Simply put, the Service should ensure that its management activities benefit— and do not harm—those species, habitats, and natural processes that are rare and/or declining within the regional ecological context within which the planning unit occurs.

Response: We feel the recommended change is beyond the scope of this policy. A new policy addressing the ecological integrity of the National Wildlife Refuge System is currently being developed and will be published as 601 FW 3 of the Service Manual.

Comment: The planning policy needs to refer to the biological integrity policy when relying on that document for guidance. The planning policy also needs to incorporate these fundamental concepts to the extent possible in the absence of clear guidance from the future biological integrity policy. For example, 602 FW 1.3 should be revised as follows (underscored text are changes

from the original language): "Each plan will be *founded* on principles of sound fish and wildlife management, available science, *and the maintenance of biological integrity, diversity, and ecosystem health. Each plan will be consistent with* legal mandates and our other policies, guidelines, and planning documents." Amend 602 FW 2.1 to include similar language: "Comprehensive Conservation Plans (CCPs) describe the desired future conditions of a refuge, and provide long-range guidance and management direction for the Refuge Manager to accomplish the purposes of the refuge, contribute to the mission of the System, *ensure that the biological integrity, diversity, and environmental health of the System are maintained,* and meet other relevant mandates." Biological integrity, diversity, and ecosystem health also need to be defined within the planning policy.

Response: We have incorporated the suggested text changes, with slight modification, into the final policy. In addition, we have defined the terms biological integrity, biological diversity, ecological integrity, and environmental health. These definitions are consistent with those which will appear in 601 FW 3 (ecological integrity policy).

Comment: Add the following language to Section 2.4 C (1)(g): Internal Scoping: "Identify significant opportunities to improve the health of refuge habitats or to improve the functioning of ecological systems."

Response: We have addressed the need to identify these opportunities in Section 3.4 C (1)(e).

II. Basing Management Decisions on the Best Available Science

Comment: With regard to developing scientific and other data, such information may be gathered from a number of sources, including the various public comment periods provided by the proposed policy. Thus, when the CCP is presented for public comment, refuge planners should be seeking input and assistance from the scientific community and the public at large, and be responsive to and accountable for considering such scientific input, as would be the case during a notice and comment period under the National Environmental Policy Act (NEPA).

Response: Indeed, we must seek and be responsive to considering the scientific input provided by resource experts, and all other publics, under NEPA. The final policy reflects these points.

Comment: Section 602 FW 2.3 D of the draft policy establishes a goal to "support management decisions and their rationale by sound professional judgment," a statement that appears reactive and defensive of status quo operations. To highlight the importance of science in decision making, this goal should be reworded.

Response: We revised the above goal as follows: "To support management decisions and their rationale by using a thorough assessment of available science derived from scientific literature, on-site refuge data, expert opinion, and sound professional judgment." See 602 FW 3.3 D.

III. Defining Our Relationship With States and Other Agencies and Their Programs

Comment: One commenter states that in Alaska the Department of Fish and Game is woefully underfunded and the Alaska State Legislature has imposed management "standards" regarding priorities for wildlife management that are inconsistent with the major purposes of National Wildlife Refuges in that state (*e.g.,* to conserve fish and wildlife populations and habitats in their natural diversity). The commenter states that it is unrealistic to expect that refuge management plans will be the same as State plans especially when dealing with controversial issues. Furthermore, the public, Tribes, and non-governmental organizations should have the same opportunities for participation in the development and review of CCPs as do State and local governments and adjacent landowners.

Response: Section 668dd (e)(1)(A)(iii) of the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, instructs the Secretary to "issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located * * *" We believe that we have an obligation under this and other provisions of the Refuge Improvement Act to work closely with State fish and game agencies as we prepare our plans. It is important to note that the Act calls for our plans to be consistent with State plans "to the extent practicable," and that our Regional Directors are the ultimate decision makers in the process. Congress directs our close working relationships with the States. We also believe we built sufficient opportunities into the process to allow all interested parties to participate in our planning efforts.

Comment: We received a number of comments that the refuge planning teams should also include members of State and Tribal conservation agencies.

Response: We changed the policy in Section 3.4 C (1)(a) to state that, "We will provide representatives from appropriate State and Tribal conservation agencies * * * the opportunity to serve on planning teams." We will provide a formal written request inviting States, Tribes, and other appropriate agencies to join the refuge planning effort at the beginning of the process.

Comment: Some commenters requested that States be involved in step-down management plans.

Response: The planning policy guidance provides for and we encourage this opportunity.

Comment: Many commenters requested that the Service participate in cooperative planning efforts with States and/or other agencies.

Response: We have worked closely with many States, other Federal agencies, and others and encourage cooperative management planning for fish and wildlife and natural resources whenever feasible.

Comment: Some of the commenters questioned whether State agencies could be involved in addressing comments, plan review and implementation.

Response: We encourage State and other agency involvement throughout the planning and management processes—including implementation and review. Furthermore, by being a member of the refuge planning team, State agencies will have a direct opportunity to assure that we accurately reflect or respond to their comments in the CCP document or in our analysis. While we recognize the need for input and feedback from others, we recognize the possibility of debate or alternative management direction, if guided solely by other influences. For this reason, while we encourage full input from the States and other entities in our plans, we retain management and decision-making authority for all units of the National Wildlife Refuge System, including approval of CCPs.

Comment: Some commenters asked about other possible partnerships with the Service, beyond CCPs, such as joint ventures and ecosystem planning.

Response: We are appreciative of the interest of States and other organizations who wish to participate as a partner in our refuge and non-refuge projects. We encourage partnerships through our ecosystem approach. We invite agencies and organizations to contact our Regional Offices for more information on how to participate as a partner in our activities.

Comment: Some commenters questioned what determines adequate coordination with States, other agencies, and the public.

Response: Adequate coordination with States, Tribes, other agencies, and the general public includes an invitation to participate, actual participation in our processes, regular and good communication, use of appropriate tools and materials to aid coordination, a sense of teamwork from all parties, and resulting successful partnerships beyond the planning phase. The Service's refuge planning policy developed herein provides for all the processes and procedures for us to meet our burden of responsibility, in regard to agency coordination.

IV. Identifying Biological Information Necessary for Planning and Management

Comment: Criteria should be established for assessing the adequacy of data for making management decisions. The Service should consider delaying management choices until adequate information is available to make a decision informed by science. The U.S. Forest Service proposed planning rule states that if data are not adequate, this triggers a new or supplemental broad-scale assessment or local analysis before proceeding to decision making. It is suggested that the Service consider a similar modification of the proposed policy.

Response: In situations where we are unable to develop new data for the CCP, the plan may identify the need for further data collection. In such cases we may delay decision making, pending additional data collection and analysis. There are many sources of data that can aid in plan development. We include a list of potential data sources in 602 FW 3.4 C (1)(e). A lack of data should not delay completion of the CCP.

Comment: A number of commenters requested that the Service expand and clarify its policy and procedures for collection of data associated with CCPs.

Response: Based on the comments received, we have made extensive changes to Sections 3.4 C(1)(e) and (f), including additional discussion on data needs, data collection, data sources, use of outside experts and literature reviews, and data standards.

V. Clarifying Under What Conditions We Should Revise a CCP

Comment: Additional guidance is necessary to clarify the limits of the adaptive management strategy. The Service's intention of revising a CCP every 15 years after establishment of the initial CCP comports with the requirements set forth in the Refuge Improvement Act. Moreover, the Service indicates that it will revise a CCP sooner than 15 years after the initial CCP is approved, "if conditions that affect the refuge or planning unit change significantly." It is unclear at what point or under what conditions the CCP should, or must, be reviewed or reassessed, prior to the expiration of the 15-year period. The commenter believes that both the Refuge Manager and the public need further guidance as to when a review should be conducted as a result of changing ecological or other conditions presented to the refuge environment, including changes in science which may render a certain use obsolete or no longer compatible with the purposes for which the refuge was established. The Service should amend the draft policy so as to establish as near of an objective standard as possible, and include guidelines and examples for the use of refuge planners.

Response: We have modified Step 8, "Review and Revise Plan," to provide additional guidance. We have revised Subsection (a) to instruct refuge planners and managers to "Modify the plan and associated management activities whenever monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, and goals." Subsection (b) now states: "Revise the CCP when significant new information becomes available, ecological conditions change, major refuge expansion occurs, or when we identify the need to do so during plan review." While these revisions are minimal, we believe we must provide additional guidance dealing with the principles of adaptive management and monitoring. However, we do not believe this type of guidance is appropriate in our planning policy. *Fulfilling the Promise: The National Wildlife Refuge System* includes a number of recommendations focused on developing programs for natural resource inventory and monitoring, habitat monitoring, and adaptive management. Once we fully implement these recommendations and establish programs, we will provide appropriate guidance and initiate training courses. Only then will we be able to utilize the principles of adaptive management to refine our approaches and determine how effectively we are accomplishing refuge goals and objectives.

Comment: Some commenters asked the Service to clarify what level of planning and plan revision is required for refuges.

Response: Chapter 1 of the policy provides a general description of planning requirements. Chapter 3 (formerly Chapter 2) deals specifically with CCPs. Section 3.4 C(8) provides details on plan revision. In general, all newly established refuges will have a Conceptual Management Plan in place at the time of refuge establishment. We will develop CCPs as soon as possible but not later than 15 years after establishment of a refuge. We will review CCPs annually and make revisions as needed. We will revise CCPs at least every 15 years.

Comment: Some commenters were concerned that a change of management direction could occur with a change of Refuge Manager.

Response: The planning policy states that the Refuge Manager shall manage the refuge under an approved CCP, and that plan revision should occur only when monitoring and evaluation documents the need for change in order to achieve planning unit purpose(s), goals, and objectives. The Regional Director approves the CCP with input and concurrence from many levels within the Service, as well as outside review and comment.

VI. Expediting or Further Clarifying Our Planning Process

Comment: Implementing a "Public Participation Plan" early in the planning process before developing alternatives or drafting the plan will help the Service identify issues and define the desired future condition(s) of a particular refuge. Extra effort will be needed at this step of the process in order to establish a firm foundation for subsequent planning phases. Additional guidance would be helpful to ensure refuge planners make this effort.

Response: We require the preparation of a "Public Participation Plan" (referred to as a "Public Involvement/ Outreach Plan") in Step 1, "Preplanning: Planning the Plan," of our Comprehensive Conservation Planning process. We also provide guidance on preparing a "Public Involvement/Outreach Plan" during the Refuge Comprehensive Conservation Planning course offered at our National Conservation Training Center. This course is available to Service personnel and other planning team members who are about to begin the preparation of a refuge CCP.

Comment: Integrating the CCP with various Environmental Assessments (EA)/Environmental Impact Statements (EIS) from the outset may not achieve the planning expediency that it is intended to achieve. To save time and money, it is suggested that the first step in the CCP process should be the development of a stand-alone "vision document" that generally describes the

goals of the refuge and its desired future condition. After the goals of the refuge and its desired future condition are documented and agreed upon, then various EAs/EISs can be developed as a mechanism to examine the alternatives on how to achieve them.

Response: There is no need for a stand-alone vision document. The refuge vision statement and goals are integral parts of our CCP process. Identified in Step 1, "Preplanning: Planning the Plan," we subsequently share them with the public in Step 2, "Initiate Public Involvement and Scoping," and, based on the public's comments, modify them as appropriate in Step 3, "Review Vision Statement and Goals and Determine Significant Issues." We ultimately use them to help identify our Proposed Action in the draft NEPA document in Step 4, "Develop and Analyze Alternatives, Including the Proposed Action." The proposed action will be the one that best achieves the refuge purpose(s), vision, and goals; helps fulfill the Refuge System mission; maintains and, where appropriate, restores ecological integrity; addresses the significant issues and relevant mandates; and is consistent with principles of sound fish and wildlife management.

Comment: Incorporating "compatibility determinations" within the CCP process is a laudable goal. However, in light of the previously completed determinations, it may be advisable to allow this process to have its own time line independent from, but monitored by, the CCP process. These determinations may be examples where interim modifications (of the size or scope that would not require reopening the planning process) are needed between scheduled planning cycles. Additional guidance may be necessary to help determine when, where and how these interim modifications are made.

Response: We believe that incorporating compatibility determinations in our refuge CCPs is both efficient and makes good sense. The degree of public review and opportunities to comment provided in the CCP process will be more than adequate to fully comply with the provisions of the National Wildlife Refuge System Improvement Act of 1997. We believe that we will be able to accommodate most, if not all, interim modifications required for these determinations through the revision procedures of the process. While we will likely accommodate many of these modifications without reopening the entire planning process, we will undoubtedly reopen some. The process will be able to accommodate both situations.

Comment: A commenter expressed the concern that the lack of specific data should not impede the planning process, but rather incorporate and identify this shortcoming as a specific need of a particular refuge in the planning process. While the draft policy specifically mentions that the CCP can identify data needs as part of the plan, it does not provide direction to the effect that the planning process should continue and not be stalled as a result of incomplete data.

Response: We revised the text of the policy in Step 1, "Preplanning: Planning the Plan, (e) Planning Area and Data Needs," to indicate that "While we may not be able to develop new data for the CCP, we may identify the need for further data collection. A lack of data should not delay the completion of the CCP."

Comment: A concern has been raised regarding the "Internal Reviews" of the CCP, or subparts thereof, that are called for in the draft policy. In each reference to internal reviews, the draft policy directs that these should be conducted by "* * * following established regional procedures," yet fails to identify what these procedures may be. The commenter believes that additional guidance is needed to provide a greater degree of consistency to the manner in which internal reviews are conducted.

Response: The "established regional procedures" to which we refer deal primarily with the internal distribution of documents. We have revised the text of the policy in both Step 5, "Prepare Draft Plan and NEPA Document, (d) Internal Review," and Step 6, "Prepare and Adopt Final Plan, (c) Internal Review," to provide further guidance on the internal distribution of documents to include: "* * * refuge program managers, ecosystem managers, refuge staff and other appropriate Service programs and divisions, as well as other agency partners."

Comment: From a public participation point of view, a commenter recommends that a generalized description of the types of circumstances in which "categorical exemptions" may be invoked would be helpful to include in the final policy. Another commenter noted that Section 2.4 C (8)(b) states that CCPs will be periodically reviewed and revised "* * * generally through the use of a categorical exclusion." It was requested that the Service define exactly what category of actions, either individually or cumulatively, it determines will not have a significant effect on the human environment (40 CFR 1508.4).

Response: When revising a CCP, we expect our decision makers to ensure that, when we can categorically exclude an action, the action does, in fact, comply with the requirements and limitations described in the categorical exclusion. Because most categorical exclusions apply to a variety of our actions and different program activities, it is not possible, nor desirable, to address in this policy all possible actions or situations covered by a given categorical exclusion. Our NEPA policy already provides such guidance (see 550 FW 3.3).

Comment: The opening section of Part 602, (National Wildlife Refuge System Planning), Chapter 2, (Comprehensive Conservation Planning Process), says: "it is not the intent of this policy to provide step-by-step direction on how to prepare a CCP but rather to establish the requirements and standards to which we will hold all CCPs." However, "requirements and standards" are either non-existent or very weak. Instead, the subsequent sections primarily describe the steps of the planning process. This is particularly apparent when it comes to wildlife-dependent recreational uses.

Response: We have revised the text of the policy in Section 3.1 (formerly Section 2.1), "What is the purpose of this chapter?," to read, "This policy provides guidance, step-by-step direction, and establishes minimum requirements for all CCPs." We will address the "requirements and standards" to which we originally referred in Part 601 of the Service Manual, "Mission, Goals, and Purposes of the National Wildlife Refuge System," as well as through recommendations in *Fulfilling the Promise: The National Wildlife Refuge System.*

Comment: After describing the steps to be taken to ensure public involvement in the scoping process in Section 2.4 B(2), the policy requires a review of the vision statement and goals to determine significant issues (Section 2.4 B(3)). Item B(3) says, "based on this review, modify the vision and goals for the planning unit as appropriate." The planner needs to keep in mind that Congress has set certain policies and requirements for the administration of the Refuge System. The following sentences should be added to B(3)(a):

"We need to keep in mind that the law sets forth some very specific policies and requirements for the administration of the Refuge System. These include the basic mission of the System and the direction that compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the

System, directly related to the mission of the System and the purposes of many refuges. Regardless of what may or may not develop during the public involvement and scoping process, the law requires that wildlife-dependent recreational uses be facilitated and expanded."

Response: Step 2, "Initiate Public Involvement and Scoping," instructs the planner to involve the public and gather comments on the existing vision statement, goals and objectives, potential issues, management actions and concerns, significant problems or impacts and opportunities or alternatives to resolve them. This is the very essence of the scoping process mandated by NEPA. Step 3, "Review Vision Statement and Goals and Determine Significant Issues," further instructs the planner to review and evaluate the public's comments on the vision statement and goals and modify them as appropriate. It may not be appropriate to modify them based on the comments received. Professional planners understand that decisions are not based on majority opinion, and we charge them with making certain the public understands this most basic tenant of NEPA.

Comment: The Service properly states that one of the goals for the CCP is to "ensure that we manage each refuge to fulfill the mission of the System as well as the specific purposes for which we established that refuge." The purposes for which the refuge was established should be the very foundation of every CCP. Thus, each CCP should begin with a recitation of the goals for which that particular refuge was established, as enunciated in the text of the refuge's authorizing documentation, and a narrative of how those goals relate to and fulfill the NWRS mission. Such an approach would not only ensure adherence to the refuge's purposes and Refuge System mission, but would be consistent with the intent of Congress in enacting the Refuge Improvement Act.

Response: Step 1, "Preplanning: Planning the Plan," now includes a new Subsection (b) Identify Refuge Purpose(s), History, and Establishing Authority. We instruct those preparing CCPs to "Document the history of refuge establishment and management, as well as refuge purposes and authorizing authority * * *" which "* * * will become driving forces in the process * * *" This is the first task the newly formed planning team undertakes, and we include this important material in Chapter I, "Introduction/Background" of the CCP (also see Exhibit 3–4).

Comment: The Service's proposed policy would require additional expenditures of time on the part of FWS personnel, particularly Refuge System field personnel. There is concern that the demands imposed on Refuge Managers and their staffs by these proposed planning and related NEPA compliance requirements will adversely affect refuge staff's ability to maintain their commitment to current refuge operations, if additional funds and personnel are not made available. Thus, it is imperative that the level of commitment on the part of the Service toward proper planning and administration of the Refuge System be matched by a commitment from the Department of the Interior and Administration to seek an appropriate level of funding on a yearly basis, to provide additional staff and other resources, where needed.

Response: We recognize this potential problem. Congress increased our budget in 1996 to include funding dedicated to the preparation of CCPs. Our regional and field offices are using these funds to provide professional planning staff and services to assist refuge field personnel in the preparation of their plans. The CCPs themselves also will document the increased staffing and funding levels required for their full implementation.

Comment: Public participation is critical to the administration of a refuge and the Refuge System. Proposed Section 2.4 C (2)(a) appears to only provide the public with the ability to comment on the Notice of Intent to prepare a CCP only if the Service intends to prepare an EIS for the CCP. The public should have the ability to provide public comments as part of the scoping process when the Service intends to prepare a CCP, whether or not an EIS is drafted. This section should be amended to make clear that a comment period will follow the publication of a Notice of Intent to prepare a CCP, whether or not the Service intends to prepare an EIS, and if later in the process the Service decides to prepare an EIS, a public comment period would follow that announcement as well.

Response: We did not intend to limit public participation during the scoping process. We have revised the text to remove any possible misconceptions concerning our desire to openly solicit public comment throughout the scoping process, whether or not we prepare an EIS. We have modified Section 3.4 C (2)(b) (formerly Section 2.4 C (2)(b)) to read: "Public scoping will continue until we prepare a draft CCP/NEPA document."

Comment: Amend the proposed public review period for a draft CCP/NEPA document to provide a 60-day comment period for an EA, as well as the currently proposed 60-day comment period when an EIS is to be drafted.

Response: We modified the final policy (see 602 FW 3.4 C (5)(e)) to read, "Provide a minimum of 30 days for public review of a draft CCP with an EA and 45 days for a draft CCP with an integrated EIS." The comment periods noted reflect the minimum comment periods authorized under current NEPA policies. We recognize that under many circumstances the comment period associated with a particular CCP will often be much longer depending on the nature and complexity of the plan.

Comment: Scientific data, collected from governmental and non-governmental organizations, academia and other sources are vital to refuge planning. Although the Service's draft policy acknowledges this importance, we feel that identifying the need for additional data is of equal importance to acknowledging the existence of data already in hand. The current reading of Section 2.4 C (1)(d) states that the planner "*can* identify the need for additional data." Such language does not adequately emphasize the importance of developing additional data. Hence, we recommend that the last sentence of 2.4 C (1)(d) be modified as follows: "You do not need to develop new data at the time of drafting the CCP. If current data exists, the CCP should state so and summarize the existing data; if no current data exists, the CCP should state so, and identify to the extent possible the type of data that will need to be developed."

Response: We have substantially revised the text of Section 3.4 C (1)(e) (formerly Section 2.4 C (1)(d)) based on a number of comments we received.

Comment: 1.6 K. Planning Team Leader. Revise last sentence to read: "The Planning Team Leader manages the refuge planning process, and ensures compliance with applicable regulatory and policy requirements."

Response: We made the recommended change in the final policy. See 602 FW 1.6 Q.

Comment: 1.8 E. Planning Team Leader. Revise second sentence to read: "The Planning Team Leader, in consultation with the Refuge Manager, is responsible for identifying appropriate and proper representation on the interdisciplinary planning team.* * *"

Response: We made the recommended change in the final policy. See 602 FW 1.8 E.

Comment: 1.8 F. Refuge Supervisor. Insert at the end: "Once the plan is approved by the Planning Team Leader

and the Refuge Manager, the Refuge Supervisor will also be responsible for review and approval of the plan prior to its submission to the next approval level."

Response: We made the recommended change, with slight modification, in the final policy. See 602 FW 1.8 F.

Comment: 1.8 G. Refuge Manager. Revise second sentence to read: "The Refuge Manager assures that the refuge staff participates in plan development, and is responsible for its content in terms of information relating to management of refuge resources and use activities."

Response: The latter is the responsibility of the entire planning team, and not just the Refuge Manager. We have added this responsibility to 1.8 H., "Planning Team."

Comment: Section 1.2, "What does Part 602 apply to?" should be amended to include at the end of the sentence, "except coordination areas," to be consistent with Section 1.6 C, which states "[w]e do not require CCPs for Coordination Areas."

Response: To clarify, Part 602 includes four parts. Part 602 FW 1 is a general overview of refuge planning and addresses more than just CCPs. It applies to all units of the National Wildlife Refuge System.

Comment: Although recreational and commercial trapping are clearly "wildlife-dependent recreational uses" of the Refuge System, it is unclear whether the planning policy requires compatibility determinations for these activities. Although the Refuge Improvement Act does not identify trapping as a "priority use" of the Refuge System, trapping is still a "wildlife-dependent recreational use" and should therefore mandate production of a compatibility determination, with full public review and comment. This point should be clarified in the planning policy.

Response: If a refuge plan included trapping as a use in our proposed action, it would require a compatibility determination under the provisions of this policy. We believe we adequately addressed this concern in Step 5, "Prepare Draft Plan and NEPA Document, Subpart (b) Compatibility Determinations." This subpart requires refuge planners to "Complete new compatibility determinations or re-evaluate existing compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of uses associated with the proposed action, when adequate information is available and where possible." It further requires that we incorporate the draft compatibility determinations into the draft CCP as an appendix and obtain the required public review and comment as part of the draft CCP and NEPA document.

Comment: The draft policy only lists trapping as a component of "Population Management" in its list of step-down management plans in Section 3.5 of Part 602 FW 3. Step-down management plans are required for all hunting and fishing programs, but not for recreational and commercial trapping. The commenter interprets this to mean that commercial and recreational trapping will not be allowed on the National Wildlife Refuge System. If this interpretation is incorrect and commercial and recreational trapping will be allowed on the Refuge System, then the draft planning policy should include a step-down management plan for this wildlife-dependent recreational activity.

Response: The commenter's interpretation is incorrect. Commercial and recreational trapping may be allowed on a refuge, but only if done as part of "Population Management." As the commenter notes, we include "Population Management" in the list of step-down management plans. If trapping is to be a part of the management of wildlife populations, such as management of furbearer populations, protection of facilities, or controlling problem predators, we would require the refuge to address trapping and associated means of the population management program in such a plan. The reason that trapping does not appear on the list of priority wildlife-dependent recreational uses is that only the six activities listed therein are specifically identified in the Refuge Administration Act. Other refuge uses, whether listed on the list of step-down management plans specifically, or under a general category, will require planning and compliance, including a compatibility determination. As such, the current reference to trapping in 602 FW 4, Section 4.5, under "Population Management" was intentional and is correct.

Comment: The Service needs to disentangle NEPA from the CCP process. To that end, the commenter recommends that we revise Section 2.4 to require that an EA or an EIS be a document entirely independent of the CCP process. Alternately, the commenter requests that we justify the legal distinction behind the determination to integrate a NEPA document within a CCP and a determination to forego integration.

Response: The language in Section 3.4 B (formerly Section 2.4 B) is correct. The Council on Environmental Quality's (CEQ) regulations require that "to the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders" (40 CFR 1502.25). The regulations also tie a similar requirement to the preparation of environmental assessments (40 CFR 1501.7(b)(3)). The confusion lies in the fact that the development of alternatives, analysis of impacts, and public participation occurs throughout this integrated process, up until the agency makes the final decision in the Record of Decision (ROD) (for an EIS) or a Finding of No Significant Impact (FONSI) or decision to prepare an EIS (for an EA). However, after the agency has made a decision on the content of the CCP, the CCP serves as the management plan for the Service. The NEPA document is useful then as a reference and to ensure that the Service maintains its commitment to the actions it intended to take, as analyzed in its NEPA document. The final policy recognizes the independent nature of the CCP following the completion of the integrated process.

Comment: The draft policy authorizes the continuance of wildlife-dependent recreational uses on an interim basis for lands newly acquired into the Refuge System, pending completion of a CCP. Section 2.4 (5)(d) states: "* * * the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational uses occurring on those lands. Also identify those uses deemed compatible that we may allow to continue on an interim basis once we acquire the lands, pending completion of a CCP." However, it is unclear what authority makes an interim compatibility determination for such wildlife-dependent uses.

Response: Section 668dd(d)(3)(A)(ii) of the National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, states that: "On lands added to the System after March 25, 1996, the Secretary shall identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any lands, existing compatible wildlife-dependent

recreational uses that the Secretary determines shall be permitted to continue on an interim basis pending completion of the comprehensive conservation plan for the refuge." We will use our compatibility policy to make such determinations.

Comment: Section 2.4 B (6)(i), Part 602 FW 2 states that "[I]n some cases, we may require a 30-day public review period for the FONSI." However, the proposed policy does not define what will trigger public review. This section should be revised to outline the criteria FWS will use to make this determination.

Response: The CEQ established criteria for requiring such a review in the "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR 1500–1508), and Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). The regulations require public review "* * * (a) if the proposal is a borderline case, *i.e.,* when there is a reasonable argument for preparation of an EIS; (b) if it is an unusual case, a new kind of action, or a precedent-setting case such as a first intrusion of even a minor development into a pristine area; (c) when there is either scientific or public controversy over the proposal; or (d) when it involves a proposal which is or is closely similar to one which normally requires preparation of an EIS." The executive orders require public review if a proposed project would be built in and negatively impact a floodplain or wetland.

Comment: Exhibit 2 lists 41 statutes and executive orders that must be considered during Comprehensive Conservation Planning. All of the listed statutes and executive orders provide for environmental or cultural protections while the authorities applying to FWS land management responsibilities are missing. The list would be complete if the following statutes and executive orders were added:

1. Executive Order 12866 requiring economic impact analyses of any Federal action.

2. Regulatory Flexibility Act requiring the evaluation of the effects of any proposed action on small entities.

3. Mining and Minerals Policy Act of 1970 that applies to the Secretary of the Interior in carrying out any program as may be authorized by any law.

4. National Materials and Minerals Policy Research and Development Act of 1980, which mandates similar requirements as under the Mining and Minerals Policy Act.

Response: We do not intend the list of statutes and executive orders in Exhibit 3–2 to be all inclusive. It is simply a list of some of the more common ones that apply to many refuges. Other statutes and executive orders, such as those cited, also must be taken into consideration by the refuges to which they specifically apply.

Comment: The policy should have better requirements for public involvement so there is a consistent way for the public to be involved throughout the Refuge System. One commenter recommends the requirement for **Federal Register** notices for all CCPs at the scoping and public review stages, in addition to notices in local newspapers or radio. In many areas, refuge offices are not located within the actual refuge areas, so greater effort needs to be made to involve the public. Public notification and opportunity for comment should be required for all CCPs at the scoping phase when plan development or revision is initiated, in addition to a 30–60 day or more public comment period for draft plans. Copies of draft and final plans should be made available to any member of the public upon request and on a website. Statements that FWS shall "develop and implement a process to ensure active public participation" (see "Planning and the NWRSIA–97) give a minimum standard that is woefully inadequate and sets the stage for poor performance. Although later sections of the policy better explain notice and comment procedures, there are loopholes indicating that not all CCPs will require full public input and review.

Response: The policy, as currently written, requires full public input and review for all CCPs. Step 1, "Preplanning: Planning the Plan," requires the preparation of a Public Involvement/Outreach Plan for each CCP, and notes that "We integrate public involvement and outreach into each step and it continues throughout the planning process." Step 2, "Initiate Public Involvement and Scoping," requires that we publish a Notice of Intent in the **Federal Register** for each CCP, and "Using news releases to the local media and other appropriate means, (to) notify the affected public of the opportunity to participate in the preparation of the CCP * * *" Step 2 also notes that "Public scoping will continue until we prepare a draft CCP/NEPA document." Step 5, "Prepare Draft Plan and NEPA Document," requires that we publish a Notice of Availability in the **Federal Register** for each CCP, and "Notify the affected public of the availability of these documents through other appropriate means, as identified in the Public Involvement/Outreach Plan." Step 5 also requires that we "Conduct appropriate public involvement activities as called for in the Public Involvement/Outreach Plan." Step 6, "Prepare and Adopt Final Plan," requires that we "Prepare a summary of the public comments received and a statement of the disposition of concerns expressed in those comments * * *" Step 6 also requires that we publish a Notice of Availability of the final approved CCP and NEPA document(s) in the **Federal Register**. Step 8, "Review and Revise Plan," calls for us to "Continue informing and involving the public through appropriate means."

Comment: One commenter commended the Service's statements in the draft planning policy that new wilderness reviews be conducted as one of the "required elements" of the CCP planning process but expressed disappointment that the draft policy does not provide guidance on how to conduct a wilderness review. (In fact, it alludes to a policy that has yet to be written.) Worse still, the policy includes a loophole that would allow refuges to defer wilderness reviews indefinitely. (A footnote to the policy reads: "Some of these required elements may not be available. In these cases, you need to develop objectives or strategies in the plan to acquire that information.")

Response: We do not believe that our policy on National Wildlife Refuge System planning is the proper place to provide detailed guidance on conducting wilderness reviews. We will provide this guidance in the forthcoming Director's Order on "Wilderness Review and Evaluation." This Director's Order will provide guidance on conducting wilderness reviews pending completion of Part 610 of the Fish and Wildlife Service Manual, "Wilderness Management." Concerning the "loophole," we have removed the footnote from Exhibit 3–3.

Comment: Amend the policy to ensure that the vision statement for the refuge is clearly tied to the mission of the Refuge System, the purposes of the refuge, and the maintenance and restoration of biological integrity, diversity, and environmental health. The draft policy does not appear to provide guidance on the preparation of appropriate refuge visions.

Response: We have revised the definition of "Vision Statement" accordingly. See 602 FW 1.6 Z. We also have added additional guidance on the preparation of refuge vision statements to 602 FW 3.4 C (1)(g).

Comment: Some commenters requested that the Service add

information on the history of settlement, land use, and land tenure of the refuge planning area.

Response: We have modified the policy by adding this item to Section 3.4 C (1)(e) and the Refuge Planning Checklist (Exhibit 3–3).

Comment: Some comments were made about the National Wildlife Refuge System compatibility policy and process and the need to further explain its relationship to refuge planning.

Response: When preparing Comprehensive Conservation Plans (CCPs) and Conceptual Management Plans, refuge planning teams will use the compatibility process outlined in the agency's compatibility policy as defined in regulations. (See 603 FW 2 of the Service Manual.) We do not find it necessary to duplicate this information herein.

Comment: Some commenters requested that CCPs should provide supporting documentation and rationale for refuge objectives.

Response: We have modified Section 3.4 C (4)(d) (Objective Development) to require that CCPs include a short narrative summary, including appropriate literature citations, which provides the rationale for each objective.

Comment: Some commenters requested additional information on adaptive management and monitoring.

Response: The refuge planning policy only touches on the need for adaptive management and monitoring to assure that we are meeting refuge purposes, goals, and objectives and that management strategies are appropriate. We will develop additional Service policy and guidance on both the adaptive management process and monitoring.

Comment: Some commenters requested that the policy include examples of planning products, such as statements for refuge goals, objectives, and strategies.

Response: We find that having a number of examples in the actual policy is not appropriate. What we have done and will continue to improve upon, is to provide a handbook on developing quality goals, objectives, and strategies. Also, the National Conservation Training Center course on Refuge Comprehensive Conservation Planning provides both a training session as well as an expanded guide of resource material, including many examples of planning products. It is our intent to keep this information current and up-to-date with the best available information and examples.

Comment: Comments were raised which asked us to identify the standards for measuring Service success in achieving Refuge System and refuge planning goals.

Response: In general, our measure of success is as follows: (1) complete plans; (2) implementation is preceding; and (3) monitoring and evaluation are under way to help assess and determine successful management actions. Additionally, we are in the process of developing a new policy chapter for the National Wildlife Refuge System, which will include identification of Refuge System goals. We have identified refuge planning goals in Chapter 1 of our planning policy. We also have initiated a process for national review of refuge CCPs to help us evaluate our planning process and products, including the capability to measure our successes and establishing standards to assure we are achieving our goals. We also are developing further guidance on adaptive management and monitoring, which will play key roles in determining the success of the refuge planning process. We sense that it may take a number of years until we can make an adequate assessment of the planning process and the resulting products before we can fully identify such measures and standards. As we further develop and refine this information, including it in future updates of the refuge planning policy will be appropriate. We invite feedback from the public and other agencies on our successes and needs for refinement throughout our planning efforts.

Comment: Some commenters asked how we would determine whether a CCP should be prepared for a single refuge or a complex of refuges.

Response: We will determine the scope of a CCP on an individual, case-by-case basis. Developing a CCP or CCPs for an administrative complex of refuges is ecologically efficient and generally our desired approach. However, in many cases, doing single refuge plans, or plans for less than an entire refuge complex, may be more effective and efficient.

Comment: Some questions were raised about the lead responsibilities, coordination and organizational relationship for developing CCPs within the Service.

Response: The Refuges and Wildlife Program has the lead in preparing plans (see "Who is responsible for implementing our policy?," 602 FW 1.8).

Comment: A recommendation was made to provide a review copy of the draft CCP to all resource experts who contribute to a CCP's development.

Response: We changed the policy in Section 3.4 C(5)(e) to reflect this recommendation.

Comment: Commenters requested that the Service clarify the definition of "objective," and expand upon the description of the objective development process, including explaining how objectives should be worded.

Response: We have included a revised definition of objectives in Section 1.6 N and a revised and expanded description of the objective development process in Section 3.4 C(4)(d).

Comment: Section 602 FW 1.3 and various other sections in the draft policy indicate that the plans will "contribute to" the System mission. In each such instance, the phrase "contribute to" should be replaced with the word "fulfills."

Response: We slightly modified the recommended change in the final policy to read, "help fulfill the Refuge System mission."

Comment: The policy should call for bold vision statements of what the planning unit should be, or what we hope to do. The draft language in Section 602 FW 1.6 S uses words that are passive and indirect (what the planning unit "could be").

Response: We made the recommended change in the final policy. See 602 FW 1.6 Z.

Comment: Section 2.4 C(1)(d) should be modified to place the emphasis squarely on conservation of wildlife, habitat, and biological integrity, where it belongs. The Service should establish a two-stage process that first identifies and describes the management steps that are necessary to accomplish the first priority ("wildlife first") and only then determine what opportunities for wildlife-dependent recreation will be provided ("wildlife-dependent recreation second").

Response: The Refuge Improvement Act clearly states that wildlife comes first on refuges. We only would allow those wildlife-dependent uses deemed compatible and appropriate to occur. Section 602 FW 3.4 C(1)(e) (formerly Section 602 FW 2.4 C(1)(d)) identifies the steps in preplanning. At this stage we are gathering information only. Hence, we see no need to establish a two-stage process as suggested.

Comment: A two-stage process is also recommended for determining goals and objectives: wildlife comes first, wildlife-dependent recreation comes second. There is a fear that the draft policy would mix wildlife conservation and recreation together.

Response: Again, we see no need to establish a two-stage process as suggested. The Refuge Improvement Act makes it quite clear that wildlife comes first on National Wildlife Refuges.

Comment: Section 602 FW 2.4 C(1)(d) states that "You do not need to develop new data for the CCP." This statement belies the commitments in Fulfilling the Promise to address the Refuge System's biological shortcomings. This sentence should be replaced with an admonition that a certain level of information is necessary before the planning process can be initiated in earnest.

Response: We made the recommended change in the final policy. We modified 602 FW 3.4 C(1)(e) (formerly 602 FW 2.4 C(1)(d)) to read: "While we may not be able to develop new data for the CCP, we may identify the need for further data collection. A lack of data should not delay the completion of the CCP."

Comment: Section 602 FW 2.4 C(1)(d)(i) should be reworded to ensure that CCPs identify and describe the "*current and historic* distribution, migration patterns, and abundance of fish, wildlife, and plants * * *" In addition, this section should be amended to identify and describe "those fish, wildlife, and plants that are rare and/or declining within the regional ecological context within which the planning unit occurs."

Response: Although we added the suggested language regarding rare and/or declining species to the final policy (see 602 FW 3.4 C(1)(e)(vii)), language pertaining to the "distribution, migration patterns, and abundance of fish, wildlife, and plants" remains unchanged to be consistent with language that appears in the Refuge Improvement Act. To help address the commenter's concern, we modified 602 FW 3.4 C(1)(e)(v) in the final policy to read, "Current and historic description of the flora and fauna, and the diversity of habitats and natural communities."

Comment: Section 602 FW 2.4 C(1)(d)(iii) should be reworded to ensure that CCPs identify and describe the "current and historic diversity of habitats and natural communities and those habitats and communities that are rare and/or declining within the regional ecological context within which the planning unit occurs." In addition, Section 602 FW 2.4 C(1)(d)(vii) should be reworded to ensure that the plans identify and describe the "current and historic role of fire and other natural processes."

Response: We incorporated the suggested changes, with slight modification, into the final policy. See 602 FW 3.4 C(1)(d)(v), (viii), and (xiii).

Comment: Section 602 FW 2.4 C(2)(c) should be modified so as to ensure that planners "identify any new information, issues, concerns * * *"

Response: We made the recommended change in the final policy. See 602 FW3.4 C(2)(c).

Comment: Section 602 FW 2.4 C(4)(d) should be modified to adopt a System-wide general policy for implementing the Refuge Improvement Act's monitoring requirement.

Response: A System-wide policy that addresses monitoring within the Refuge System already exists in 701 FW 2 of the Service Manual. We are currently revising this policy guidance and will address the monitoring mandates of the Refuge Improvement Act, as necessary.

Comment: Concurrent with the publication of the final planning policy, the Service must publish interim guidance on how wilderness reviews are to be conducted. The guidance should state that the reviews should include: (1) An inventory of all qualifying areas, (2) an analysis of the suitability for their designation as wilderness, and (3) a recommendation for wilderness designation.

Response: We expect that both the interim and final policy on wilderness will include inventory, study, and recommendation as steps needed to complete wilderness reviews. The inventory of the refuge should be broad-based to determine what areas would qualify as wilderness. The study would analyze in detail the resources, values, uses, and other characteristics of the qualifying areas (Wilderness Study Areas). The recommendation follows the study and would depend on its conclusions.

Comment: Section 1.7 A should be modified by adding "or critical habitat designations or proposals" after the words "endangered species recovery plans." In addition, Section 2.4 C(1)(d)(xiii) should be amended to read "Existing special management areas *or designations* (*e.g.,* wilderness, *critical habitat designation or proposal,* research natural area * * *)."

Response: We believe the recommended change is unnecessary since the list is not meant to be all inclusive.

Comment: A new Section 2.4 C(1)(d)(xiv) should be added that indicates "Opportunities to reintroduce endangered, threatened, candidate, or other rare species to the planning unit."

Response: We do not believe this information is appropriate to include in a section dealing with preplanning data needs (602 FW 3.4 C(1)(e)). Such actions would be more appropriate to include in the range of alternatives in the NEPA document.

Comment: Section 602 FW 2.4 C(5)(a) should be modified as follows: "Ensure that no activities are authorized on a national wildlife refuge that may interfere with the recovery of a threatened or endangered species, and ensure compliance regarding other programs and policies, including the Clean Water Act * * *"

Response: We believe the current language in 602 FW 3.4 C (5)(a) that states "Ensure compliance regarding other programs and policies, including Section 7 of the Endangered Species Act; Sections 401 and 404 of the Clean Water Act * * *" already addresses the above concerns.

Comment: Section 1.5 F should be amended to reflect the Refuge Improvement Act by adding at the end "and to ensure that these uses receive enhanced consideration over general public uses in the Refuge System."

Response: We made the recommended change in the final policy. See 602 FW 1.5 G.

Comment: Section 2.4 C (1)(d) should be amended by adding at the end a new paragraph "(xv) Conflicts that may occur or be expected to occur between non-priority uses and priority uses of the planning unit."

Response: We believe this information is more appropriate in the section dealing with environmental consequences (602 FW 3.4 C (4)(f)) rather than the section dealing with preplanning data needs (formerly 602 FW 2.4 C (1)(d)). We made the suggested change in the final policy. See 602 FW 3.4 C (4)(f).

Comment: Planning requirements should be issued as regulations not as policy. Comprehensive Conservation Planning is an integral part of the Refuge Improvement Act, and issuing planning regulations to implement the Act is entirely consistent with Congressional and Administrative intent to promulgate nationally consistent plans for the Refuge System. This is an opportunity to institutionalize better science and clear national direction and maintain this guidance through changes in agency personnel, changes in agency structure, and changes in administrations. This would increase consistency, accountability, and enforceability within the Refuge System. Further, if promulgated as regulations, the Service would have additional justification to increase funding for refuge planning because the provisions of the regulations would be mandatory, as opposed to discretionary.

Response: We assume that the commenter intended to suggest that our planning requirements be published in the Code of Federal Regulations (CFR) rather than in the Service Manual. We believe that one of the main objectives of this effort is to institutionalize better

science and clear direction that will be maintained regardless of changes in personnel, etc. We believe that, for a number of reasons, the Service Manual, rather than the CFR, is the proper vehicle.

The issuance of planning requirements as part of the Service Manual will accomplish the requirements of the National Wildlife Refuge System Administration Act, as amended by the National Wildlife Refuge System Improvement Act. Publishing planning rules in the Service Manual rather than the CFR does not diminish the requirements that they contain. Refuge Managers will be bound by those requirements that are mandatory whether or not we publish them in the CFR. In addition, because the planning chapters contain rules, we will have to use the same notice and comment procedure utilized to adopt these chapters if we decide to amend or change them.

We have chosen to use the Service Manual because: (1) The requirements are primarily working rules of procedure for Refuge Managers to follow with regard to areas that they manage; (2) the planning chapters contain a mix of rules that we must follow and general guidance that we normally will adhere to but that we may deviate from as the particular situation warrants; (3) the planning chapters do not directly regulate the public; (4) the planning chapters and the Service Manual are available to the public through either the Department of the Interior or the Fish and Wildlife Service home pages on the World Wide Web or by request made to any refuge or Service field, regional, or headquarters office and, therefore, are as available to the public as they would be if published in the CFR; and (5) publishing in the Service Manual rather than the CFR does not affect the strength of any rules that are in the chapters nor does it exempt us from procedural requirements.

Comment: The introductory sections of the draft planning policy identify an important and useful set of refuge planning goals (Sections 1.5 and 2.3). Especially important are the goals of ensuring that the System "contributes to the conservation of biological diversity and integrity and to the structure and function of the ecosystems of the United States" (Section 1.5 B) and encouraging that refuge planning be done in concert with an ecosystem approach (Section 2.3 C). However, those goals are not clearly identified as "national policy" and they are not integrated into the development of a vision and goals. While there is strong support for basing future refuge management on ecosystem goals, this emphasis needs to be much more clearly articulated.

Response: We recognize the need to establish national policy regarding Refuge System goals. This policy is currently under development and will eventually appear as 601 FW 1 of the Service Manual. We expect this policy to be available for public review and comment in spring 2000.

Comment: The definition of "all available information" should be adopted from the Proposed Compatibility Regulations (64 FR 49056) which includes as sources of information "planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously conducted or on-going research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc."

Response: We made the recommended change in the final policy. See 602 FW 3.4 C (1)(e).

Comment: The FWS must ensure that plans at the national, regional, and ecosystem levels are in place before refuge planning begins. The current schedule for CCP completion does not consider whether larger-scale priorities are in place, and does not provide enough time to develop sound individual CCPs. If this recommendation is not adopted, Refuge Managers must at the very least be required to state minimum inventory needs in their plans, if for no other reason than to ensure that they have the minimum baseline data they need in order to write their next plan.

Response: We will coordinate CCP schedules so that they follow completion of national, regional, and ecosystem plans whenever possible. However, we recognize that in some instances we will develop CCPs before ecosystem and other plans are in place or updated. Our policy is to make management decisions using a thorough assessment of available science derived from scientific literature, on-site refuge data, expert opinion, and sound professional judgment. In situations where we are unable to develop new data for the CCP, the plan may identify the need for further data collection. In such cases we may delay decision making, pending additional data collection and analysis.

Comment: A section in the planning policy should be dedicated to issues external to refuge boundaries including how land acquisition and other ecosystem management tools fit in the context of Comprehensive Conservation Planning.

Response: We recognize the need for this additional guidance. Consequently, we will be adding an additional chapter, Land Protection Planning (602 FW 2), to the Service Manual in the near future.

Comment: Endangered and threatened species should be addressed separately within the planning policy. The Service's recommendations should provide direction for specific conservation and recovery planning for threatened and endangered species. Each refuge should be required to integrate specific threatened and endangered species Conservation and Recovery Plan implementation tasks into their CCP.

Response: We do not believe there is a need to address endangered and threatened species separately within our policy. We address endangered and threatened species concerns at various steps throughout the planning process (see 602 FW 1.7 A and 602 FW 3.4 C (1)(a), (1)(e), (4)(d), (4)(f), (5)(a)). We agree that we should integrate Conservation and Recovery Plan implementation tasks for threatened and endangered species into refuge CCPs, where applicable. We advocate the development of goals, objectives, and strategies for the recovery and conservation of threatened and endangered species for any refuge with the potential for such.

Comment: The U.S. General Accounting Office (GAO) has identified four practical steps to successfully implementing ecosystem management (RCED–99–64). The Service should identify opportunities to make the proposed planning process more consistent with these steps, to ease the transition to an ecosystem approach. It is believed that the steps for ecosystem management that GAO has identified are consistent with the Refuge Improvement Act and with the Service's compatibility approach to determining the appropriateness of refuge uses.

Response: We feel the recommended change is beyond the scope of this policy.

Comment: Section 2.4C (1)(d) should be modified to require identification of the relationship between the planning unit and its watershed, and planning teams should be encouraged to identify water quality threats by collaborating with the Environmental Protection Agency (EPA).

Response: We see no need to specifically mention the relationship between the planning unit and its watershed since this relationship is encompassed by 602 FW 3.4 C (1)(e)(ii). With regard to the identification of

water quality threats, we have incorporated the above suggestion with the exception that we did not specifically mention collaboration with the EPA. We added text to 602 FW 3.4 C (1)(e) that states: "Obtain information from Federal, Tribal, State, and local agencies * * *" We imply consultation with the EPA, as appropriate.

Comment: The Forest Service rule, released on October 5, 1999, acknowledges the dynamic nature, uncertainty and inherent variability of ecological systems of which we have incomplete data and knowledge. As a result the Forest Service explicitly encourages that variable natural processes be considered when defining desired future ecological conditions. The Forest Service also shifts its perspective from a focus on habitat and population to a focus on the ecosystem conditions necessary to assure a high likelihood of maintaining the viability of native and desired non-native species over time within the plan area. This shift in perspective would benefit the management of wildlife refuges as well.

Response: We recognize the benefit of looking at the ecosystem context of each refuge. Our policy provides direction for the Refuge Manager and planning team to assess ecological conditions of the watershed, ecosystem, and the relationship to the refuge (see 602 FW 1.7). Our policy also provides direction for adaptive management and monitoring, as well as direction to change refuge management in the event of new circumstances or information (see 602 FW 3). The Service also has existing policy and guidance on ecosystem management and will be developing new policy and guidance on ecological integrity.

Comment: Section 2.4 C (1)(d) should be modified to direct the planning team to identify and describe as appropriate, the structures, components, and functions of the ecosystem(s) of which the refuge is a part. In addition, Section 2.4 C (4)(d) should be modified to direct planning teams to develop objectives for ecosystem structures, components, and functions to maintain or restore the ecological health of the refuge.

Response: We revised Section 3.4 C (1)(e) to reflect that the planning team should identify and describe the structures, components, and functions of the ecosystem(s) of which the planning unit is a part. However, we do not believe the planning team should be responsible for developing objectives related to the larger ecosystem. This responsibility belongs to our ecosystem teams.

Comment: Section 2.4 C (3)(b) should be modified to require that planning teams "determine significant issues and the appropriate scale at which to consider those issues."

Response: We made the recommended change in the final policy. See 602 FW 3.4 C (3)(b).

Comment: The Forest Service rule proposed that "focal species" should be selected to serve as surrogate measures in the assessment of ecological integrity. We believe that with limited resources for monitoring and a need to assess the health of refuge habitats and ecological processes, the Service should adopt this strategy for monitoring ecological health. Specifically, 602 FW 2.4 C (7) should be modified to require monitoring of focal species, since their status and time trend provide insights into the integrity of the larger ecological system to which refuges belong, and ecological health is a strong overarching indicator of whether refuge management is generally successful or requires significant modification.

Response: We feel this recommendation is more appropriately addressed in 701 FW 2 (the Service Manual chapter dealing with inventory and monitoring). This policy, currently under revision, will help provide guidance on how to accomplish monitoring strategies identified in the CCP.

Comment: It would be useful for Refuge Managers to seek out information regarding trends in refuge ecological conditions. It is important not only to know the current status of refuge conditions, but also whether they are improving or declining, in order to most effectively prioritize management activities. Hence, Section 2.4 C (1)(d) should be modified to read: "Identify and describe the following conditions and their trends as appropriate."

Response: We made the recommended change in the final policy. See 602 FW 3.4 C (1)(e).

Comment: It is recommended that Section 2.4 (1)(d) be amended so that planning teams would be strongly encouraged to collaborate with adjacent landowners including State, Federal, Tribal, and private landowners, especially to acquire data that may be relevant to planning decisions. Furthermore, planning teams should be encouraged to collaborate as appropriate with the Environmental Protection Agency, the Department of Agriculture's Forest Service and Natural Resources Conservation Service, the Department of Commerce's National Marine Fisheries Service, the United States Army Corps of Engineers, and relevant bureaus within the Department of the Interior such as the U.S. Geological Survey. Each of these agencies may be able to provide information that may dramatically improve the quality of CCPs with limited expense by the Service.

Response: We incorporated the above suggestion into the final policy. We added language to 602 FW 3.4 C (1)(e) which states: "Obtain information from Federal, Tribal, State and local agencies, and private landowners concerning land management issues that may impact or relate to the planning unit." We also substantially modified this section of the draft policy to include a wide variety of additional sources of information we will consult during the preplanning stage.

Comment: Section 2.4 C (3)(b) limits the consideration of issues in the CCP to those that are determined to be "significant" by the planning team. To ensure consistency across refuge units and to ensure that important ecological or public use issues are not excluded from consideration in some plans, it is necessary to establish criteria for determining which issues are "significant" and thereby warrant consideration in the CCP.

Response: We incorporated the above recommendation into the final policy. We added the following language to the end of Section 602 FW 3.4 C (3)(b): "Significant issues typically are those that are: within our jurisdiction, suggest different actions or alternatives, and will influence our decision."

Comment: Section 2.4 C (4) should be significantly modified to ensure wildlife conservation objectives are considered first in the planning process. In addition, another slight modification of this section should be considered. For example, 602 FW 2.4 C (4)(e) directs planning teams to "develop inventory and monitoring strategies to measure implementation results in quantifiable and verifiable ways." This should be elaborated to include direction to prioritize inventory and monitoring efforts in a manner "that maximizes the usefulness of acquired information in directing management activities toward the improved ecological health of the refuge." This additional direction will lead to a more productive use of limited resources for monitoring.

Response: We feel this recommendation is more appropriately addressed in 701 FW 2 (the Service Manual chapter dealing with inventory and monitoring). This policy, currently under revision, will provide guidance on how to accomplish monitoring strategies identified in the CCP.

VII. Describing the Relationship of CCPs to Refuge Purposes and Refuge System Mission

Comment: Some commenters requested that the agency not overlook the quality of the individual refuges for sake of the "System."

Response: Many sections of the policy identify the need for the planning team to acknowledge individual refuge purposes and functions. For example, see Sections 1.3 and 3.1.

Comment: Some comments were received that requested the CCP policy provide more guidance on the implications of the Service's ecosystem approach to refuge planning and management. In particular, it has been noted that while the Service's ecosystem approach has goals for the effective conservation of natural biological diversity, and the perpetuation of natural communities, many refuges have created or possess artificial habitats, croplands, dikes and other structures. It has been pointed out that more guidance may be needed to help reconcile the differences between areas which may be managed for "naturalness" and those that may need to be highly manipulated or developed to support objectives.

Response: We recognize the great variability in the Refuge System. Many areas are representative of intact ecosystems or vegetation communities, while we may have developed others to provide for wetland habitats lost at a greater scale. We will require refuge planning efforts to review a host of information, including establishing authorities, refuge purposes, past management practices, ecosystem and watershed goals, activities of neighboring lands, and species goals and objectives throughout their ranges. Goals for the restoration or maintenance of biological diversity will be high on our list of priorities for many refuges, however, it will not be appropriate for every refuge in the Refuge System. For unless restoration of wildlife habitat takes place on vast developed areas so that we no longer have to manage highly manipulated refuges to make up for the loss of wetlands or the recovery and restoration of habitats for endangered species, some of our refuge management will continue to be "unnatural," yet for the benefit of numerous wildlife species. We will be working nationally, and with our partners, to help identify and define how units of the Refuge System can best contribute to maintaining biodiversity and the context of each refuge within the greater ecosystem and landscape.

VIII. Addressing Issues Related to Recreation and Public Use

Comment: The National Wildlife Refuge System Improvement Act makes it clear that part of the planning process must be to consider, on a priority basis, wildlife-dependent uses and to facilitate such uses. In order to carry out the intent of Congress, the Service should add real "requirements and standards" to assure that adequate attention is paid to wildlife. For example, there should be language in Section 2.3 dealing with wildlife-dependent uses. This section sets out the goals for Comprehensive Conservation Planning mentioning the ecosystem concept, the use of sound professional judgment, public comment and several other "goals," but nowhere does it refer to the goal of giving priority consideration to wildlife-dependent uses or to facilitating them. The commenter recommends the insertion of a new Subsection E, reading as follows, and the re-lettering of the existing Subsections, E, F, and G:

"E. To assure that wildlife-dependent recreational uses receive priority consideration during the planning process and that plans include steps to facilitate such uses."

Response: We have inserted a new Subsection 602 FW 3.3 E in the final policy that reads: "To ensure that the six priority wildlife-dependent recreational uses receive priority consideration during the preparation of CCPs." We have re-lettered subsequent subsections F, G, and H.

Comment: In Section 2.4 B (1)(d), which deals with "planning area, data needs, and data standards" in the preplanning process, item (x) should be expanded. Currently, that item says that the planning team should "identify and describe the following * * * (x) opportunities for compatible wildlife-dependent recreation." This is quite weak compared to the stress on "facilitating" wildlife-dependent recreational uses contained in the Refuge Improvement Act. Item (x) should be revised to read as follows:

"(x) existing wildlife-dependent recreational uses, opportunities for continuing, facilitating and expanding such uses, and strategies to accomplish such continuation, facilitation and expansion."

Response: We have modified the wording in Step 1, "Preplanning: Planning the Plan, (e) Planning Area and Data Needs" (602 FW 3.4 C (1)(e)), to read as follows: "(xix) Existing and potential opportunities for wildlife-dependent recreation." Developing the strategies associated with continuing, facilitating, or expanding such uses more appropriately belongs in Step 4, "Develop and Analyze Alternatives, Including the Proposed Action, (e) Strategy Development."

Comment: In Section 2.4 B(1)(f), Vision and Goals, the third sentence contains a reference to "compatible wildlife-dependent recreation" in discussing the minimum goals that should be included in a CCP. This sentence should be expanded to read:

"At a minimum, each refuge should develop goals within the following management areas: the continuation, facilitation and expansion of opportunities for compatible wildlife-dependent recreation * * *"

Response: We believe the policy's current wording is appropriate.

Comment: Section 2.4 B(1)(g), Internal Scoping, refers to identification of problems with wildlife and habitats, assessments of water quality and quantity, potential need for administrative sites or visitor facilities, land acquisition, and controversial management actions. There is no reference at all to the continuation, facilitation and expansion of wildlife-dependent uses! The following sentence should be added to this provision:

"We also need to evaluate the current or potential wildlife-dependent uses and consider opportunities to continue, facilitate and expand such uses."

Response: We have moved the list to which you refer to Section 3.4 C (1)(e) "Planning Area and Data Needs," and have added the following item, "(xix) Existing and potential opportunities for wildlife-dependent recreation."

Comment: There is concern that with no public review and comment process in place, some wildlife-dependent uses may be allowed that are detrimental to the refuge and/or to wildlife inhabiting the refuge. Such uses may be allowed for many years, as refuges are not required to prepare CCPs until October 2012. The planning policy should reflect that a public review and comment process will be implemented for all interim wildlife-dependent uses.

Response: We believe we adequately addressed this concern in Step 5, "Prepare Draft Plan and NEPA Document, Subpart (c) Pre-acquisition Compatibility Determinations." This subpart requires that: "If our proposed action includes expanding the planning unit by acquiring new lands, the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational public uses deemed compatible that we will allow to continue after acquisition." The public will have an opportunity to review and comment on all compatibility determinations. Our refuge planning

policy directs that we incorporate pre-acquisition compatibility determinations into the draft CCP and NEPA document, where they will receive their required public review and comment.

Comment: A few commenters stated confusion with, or recommended changes to, the definition of wildlife-dependent recreational uses. In particular, some suggested we reconsider trapping, and other uses, as a wildlife-dependent recreational use.

Response: While we recognize that trapping of animals may be a form of wildlife-dependent recreation, the Refuge Administration Act, as amended, binds our definition of wildlife-dependent recreationai uses, which only includes hunting, fishing, wildlife observation and photography, environmental education and interpretation. These are the priority public uses of the National Wildlife Refuge System. We recognize that we may consider other recreational and other activities, such as trapping, during the planning process. Such other uses or activities proposed on a refuge may or may not be both appropriate on the refuge and compatible with refuge purposes. We would not label other recreational uses that we find to be appropriate and compatible through the planning process as wildlife-dependent recreational uses, but would place them in a category of other recreation. Specific to trapping, we note that in many cases we would classify this activity as a commercial use, and require a permit and compatibility determination. We acknowledge that many of the wildlife-dependent recreational uses are "more than recreation," in that the outdoor experience can provide the visitor with a wealth of experiences. However, we support and are bound by the definition in the Act.

Comment: At least one commenter requested that we consider establishing carrying capacities for public uses and other uses.

Response: The Service is developing new policies on habitat management, priority wildlife-dependent recreation, and refuge uses (appropriate uses). We will recommend that carrying capacities be considered in the development of these policies.

Primary Author

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Refuge Management—Part 602 National Wildlife Refuge System Planning

Chapter 1 Refuge Planning Overview.—602 FW 1

1.1 What is the purpose of Part 602 and this chapter? Part 602 provides guidance for National Wildlife Refuge System (Refuge System) planning, including specific chapters on the Comprehensive Conservation Planning Process (602 FW 3) and Step-Down Management Plans (602 FW 4). This chapter (602 FW 1) provides an overview of refuge planning. We will add an additional chapter, Land Protection Planning (602 FW 2), in the near future.

1.2 To what does Part 602 apply? Part 602 applies to all units of the National Wildlife Refuge System.

1.3 What is our policy for managing refuges? The U.S. Fish and Wildlife Service (Service or we) will manage all refuges in accordance with an approved Comprehensive Conservation Plan (CCP), which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. We also may require step-down management plans to provide additional details about meeting CCP goals and objectives and to describe strategies and implementation schedules. Each plan will be founded on principles of sound fish and wildlife management and available science, and be consistent with legal mandates and our other policies, guidelines, and planning documents. We will prepare refuge plans that, above all else, ensure that wildlife comes first on national wildlife refuges.

1.4 What are our authorities? Authorities listed below include laws that require us to manage units of the Refuge System in accordance with approved CCPs and to integrate refuge planning decisions with the National Environmental Policy Act (NEPA) process.

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law states that "* * * the Secretary shall—(i) propose a comprehensive conservation plan for each refuge or related complex of refuges * * * in the System; (ii) publish a notice of opportunity for public comment in the **Federal Register** on each proposed conservation plan; (iii) issue a final conservation plan for each planning unit consistent with the provisions of this Act and, to the extent practicable, consistent with fish and wildlife conservation plans of the State in which the refuge is located; and (iv) not less frequently than 15 years after the date of issuance of a conservation plan under clause (iii) and every 15 years thereafter, revise the conservation plan as may be necessary." This law provides additional detail on conservation planning for the Refuge System. Above all else, the law directs that wildlife comes first in the National Wildlife Refuge System. It does so by establishing that wildlife conservation is the principal mission of the Refuge System; by requiring that we maintain the biological integrity, diversity, and environmental health of each refuge and the Refuge System; and by mandating that we monitor the status and trends of fish, wildlife, and plants on each refuge.

B. Alaska National Interest Lands Conservation Act of 1980 as amended, 16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784 (ANILCA). Section 304 states, in part, "The Secretary shall prepare, and from time to time, revise, a comprehensive conservation plan * * * for each refuge." You may find additional guidance on the content of these plans and management direction in this and other sections of ANILCA. If any provisions of the National Wildlife Refuge System Improvement Act of 1997 conflict with the provisions of ANILCA, the provisions of ANILCA will prevail for refuges in Alaska.

C. National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347, and the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR 1500–1508. NEPA is the basic national charter for protection of the environment. The procedural provisions in CEQ's regulations require Federal agencies to integrate the NEPA process with other planning at the earliest possible time in order to provide a systematic interdisciplinary approach; identify and analyze the environmental effects of their actions; describe appropriate alternatives to the proposal; involve the affected State and Federal agencies, Tribal governments, and the affected public in the planning and decision-making process; and fully integrate all refuge proposals that may have an impact on the environment with the provisions of NEPA (40 CFR 1501.2).

1.5 What are the goals of refuge planning?

A. To ensure that wildlife comes first in the National Wildlife Refuge System.

B. To ensure that we manage the Refuge System for the conservation of fish, wildlife, plants, and their habitats and that refuge management achieves our policies, the Refuge System mission, and the purposes for which the refuge was established.

C. To ensure that the administration of the Refuge System contributes to the conservation of the ecological integrity of each refuge, the Refuge System, and to the structure and function of the ecosystems of the United States.

D. To ensure opportunities to participate in the refuge planning process are available to our other programs; Federal, State, and local agencies; Tribal governments; conservation organizations; adjacent landowners; and the public.

E. To provide a basis for adaptive management by monitoring progress, evaluating plan implementation, and updating refuge plans accordingly.

F. To promote efficiency, effectiveness, continuity, and national consistency in refuge management.

G. To help ensure consistent System-wide consideration of the six priority public uses—hunting, fishing, wildlife observation and photography, and environmental education and interpretation—established by the Refuge Administration Act and to ensure that these uses receive enhanced consideration over general public uses in the Refuge System.

H. To ensure that we preserve the wilderness character of refuge lands.

1.6 What do the following terms mean? (Quotations are from the Refuge Administration Act unless otherwise noted)

A. Adaptive Management. The rigorous application of management, research, and monitoring to gain information and experience necessary to assess and modify management activities. A process that uses feedback from refuge research and monitoring and evaluation of management actions to support or modify objectives and strategies at all planning levels.

B. Alternatives. Different sets of objectives and strategies or means of achieving refuge purposes and goals, helping fulfill the Refuge System mission, and resolving issues.

C. Biological Diversity. The variety of life, including the variety of living organisms, the genetic differences among them, and the communities in which they occur.

D. Biological Integrity. Biotic composition, structure, and functioning at the genetic, organism, and community levels consistent with natural conditions, including the natural biological processes that shape genomes, organisms, and communities.

E. Comprehensive Conservation Plan (CCP). A document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates.

F. Coordination Area. A wildlife management area made available to a State, by "(A) cooperative agreement between the United States Fish and Wildlife Service and the State fish and game agency pursuant to Section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or (B) by long-term leases or agreements pursuant to the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010 et seq.)." States manage Coordination Areas, but they are part of the Refuge System. We do not require CCPs for Coordination Areas.

G. Ecological Integrity. The integration of biological integrity, natural biological diversity, and environmental health; the replication of natural conditions.

H. Ecosystem. A biological community together with its environment, functioning as a unit. For administrative purposes, we have designated 53 ecosystems covering the United States and its possessions. These ecosystems generally correspond with watershed boundaries, and their sizes and ecological complexity vary.

I. Environmental Health. Abiotic composition, structure, and functioning of the environment consistent with natural conditions, including the natural abiotic processes that shape the environment.

J. Goal. Descriptive, open-ended, and often broad statement of desired future conditions that conveys a purpose but does not define measurable units.

K. Issue. Any unsettled matter that requires a management decision, *e.g.,* an initiative, opportunity, resource management problem, threat to the resources of the unit, conflict in uses, public concern, or the presence of an undesirable resource condition.

L. National Wildlife Refuge (refuge). "A designated area of land, water, or an interest in land or water within the Refuge System, but does not include Coordination Areas." Find a complete listing of all units of the Refuge System in the current Annual Report of Lands Under Control of the U.S. Fish and Wildlife Service.

M. National Wildlife Refuge System Mission (mission). "The mission of the System is to administer a national network of lands and waters for the conservation, management, and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

N. Objective. A concise statement of what we want to achieve, how much we want to achieve, when and where we want to achieve it, and who is responsible for the work. Objectives derive from goals and provide the basis for determining strategies, monitoring refuge accomplishments, and evaluating the success of strategies. Make objectives attainable, time-specific, and measurable.

O. Planning Area. The area upon which the planning effort will focus. A planning area may include lands outside existing planning unit boundaries currently studied for inclusion in the Refuge System and/or partnership planning efforts. It also may include watersheds or ecosystems outside of our jurisdiction that affect the planning unit. At a minimum, the planning area includes all lands within the authorized boundary of the refuge.

P. Planning Team. Planning teams are interdisciplinary in membership and function. Teams generally consist of a Planning Team Leader, Refuge Manager and staff biologists, a state natural resource agency representative, and other appropriate program specialists (*e.g.,* social scientist, ecologist, recreation specialist). We also will ask other Federal and Tribal natural resource agencies to provide team members, as appropriate. The planning team prepares the CCP and appropriate NEPA documentation.

Q. Planning Team Leader. The Planning Team Leader typically is a professional planner or natural resource specialist knowledgeable of the requirements of NEPA and who has planning experience. The Planning Team Leader manages the refuge planning process and ensures compliance with applicable regulatory and policy requirements.

R. Planning Unit. A single refuge, an ecologically or administratively related refuge complex, or distinct unit of a refuge. The planning unit also may include lands currently outside refuge boundaries.

S. Purposes of the Refuge. "The purposes specified in or derived from the law, proclamation, executive order,

agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit." For refuges that encompass Congressionally designated wilderness, the purposes of the Wilderness Act are additional purposes of the refuge.

T. Refuge Operating Needs System (RONS). The Refuge Operating Needs System is a national database that contains the unfunded operational needs of each refuge. We include projects required to implement approved plans and meet goals, objectives, and legal mandates.

U. Step-Down Management Plan. A plan that provides specific guidance on management subjects (e.g., habitat, public use, fire, safety) or groups of related subjects. It describes strategies and implementation schedules for meeting CCP goals and objectives.

V. Strategy. A specific action, tool, technique, or combination of actions, tools, and techniques used to meet unit objectives.

W. U.S. Fish and Wildlife Service Mission. Our mission is working with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

X. Wilderness Review. The process we use to determine if we should recommend Refuge System lands and waters to Congress for wilderness designation. The wilderness review process consists of three phases: inventory, study, and recommendation. The inventory is a broad look at the refuge to identify lands and waters that meet the minimum criteria for wilderness. The study evaluates all values (ecological, recreational, cultural), resources (e.g., wildlife, water, vegetation, minerals, soils), and uses (management and public) within the Wilderness Study Area. The findings of the study determine whether we will recommend the area for designation as wilderness.

Y. Wildlife-Dependent Recreational Use. "A use of a refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation." These are the six priority public uses of the Refuge System as established in the National Wildlife Refuge System Administration Act, as amended. Wildlife-dependent recreational uses, other than the six priority public uses, are those that depend on the presence of wildlife. We also will consider these other uses in the preparation of refuge CCPs, however, the six priority public uses always will take precedence.

Z. Vision Statement. A concise statement of what the planning unit should be, or what we hope to do, based primarily upon the Refuge System mission and specific refuge purposes, and other mandates. We will tie the vision statement for the refuge to the mission of the Refuge System; the purpose(s) of the refuge; the maintenance or restoration of the ecological integrity of each refuge and the Refuge System; and other mandates.

1.7 What is the relationship between Refuge System planning and other planning efforts? Refuge planning should maintain continuity and consistency with other planning efforts. The relationship between these planning efforts is hierarchical, starting from national plans to regional, State, and ecosystem-level plans, stepping down to refuge-specific plans. See Exhibit 1–1. The process of adaptive management uses feedback from refuge research and monitoring, and evaluation of management actions to support or modify objectives and strategies at all planning levels.

A. National and Regional Plans. We will review other Service documents that address particular programs, species, habitats, public uses, economic uses, archaeological resources, etc., when identifying issues to address in refuge planning. National and regional goals, objectives, strategies, and policies influence management planning for refuges. Source documents include: Fulfilling the Promise: The National Wildlife Refuge System, the Service Manual, the North American Waterfowl Management Plan, National Outreach Strategy, regional resource plans, endangered species recovery plans, migratory bird and flyway plans, fishery resource plans, Joint Venture plans, Partners in Flight plans, and strategies to promote the conservation of natural biological diversity. The contribution of the refuge to achieving regional and national goals will help implement our mission and ensure integrity of the Refuge System.

B. Service Ecosystem Plans, State Fish and Wildlife Conservation Plans, and Other Landscape-Level Plans. Refuge planning will reflect conservation goals and objectives for the landscapes in which the refuges are located. Refuges must review goals and objectives of existing ecosystem plans and determine how the refuge can best contribute to the functioning of the ecosystem. We will coordinate refuge planning with State conservation agencies, Tribal governments, other government agencies, and nongovernmental organizations. To the extent practicable, refuge plans will be consistent with the fish and wildlife conservation plans of the State and the conservation programs of Tribal, public, and private partners within the ecosystem.

C. Land Acquisition Planning. We integrate land acquisition and CCP planning throughout the land acquisition planning process. We describe three opportunities for integration in the following paragraphs:

(1) Refuge planning typically begins before the establishment of an area as a unit of the Refuge System. Land acquisition planning (usually resulting in a Land Protection Plan [LPP] and associated NEPA document) is a preliminary step in the continuous, integrated refuge planning process. This process eventually results in completion of a CCP and appropriate refuge step-down management plans. Other land use, species, or habitat protection planning efforts, or legislative or executive directives may precede land acquisition planning. Refuge establishment documentation (LPP and associated NEPA document) should identify the approved refuge boundary, refuge purpose(s), goals, and general management direction. See 341 FW 2.

(2) Planning for proposed new refuges or major expansions to existing refuges not undergoing a CCP will include the development of a Conceptual Management Plan (CMP) for the new unit. The CMP provides general, interim management direction. The CMP should identify refuge purpose(s), interim goals, and pre-existing compatible wildlife-dependent recreational uses (hunting, fishing, wildlife observation, photography, environmental education and interpretation) that we will allow to continue on an interim basis. The interim period is the duration of time between establishment of a new refuge or refuge expansion and the completion of an approved CCP. Refuges functioning under CMPs also will develop step-down management plans, as appropriate.

(3) Fully integrate land acquisition planning efforts into CCP preparation whenever possible. Some proposed new refuges or refuge expansions may warrant CCP development at the time of acquisition planning. Include appropriate Realty staff on the planning team when considering land acquisition during the CCP process to ensure consistency with land acquisition policy. See 341 FW 2.

D. Comprehensive Conservation Plans (CCP). The CCP is a document that describes the desired future conditions of a refuge or planning unit and provides long-range guidance and management direction to achieve the purposes of the refuge; helps fulfill the

mission of the Refuge System; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; helps achieve the goals of the National Wilderness Preservation System; and meets other mandates. See 602 FW 3. For refuges established after October 9, 1997, prepare CCPs when the refuge obtains staff and acquires a land base sufficient to achieve refuge purposes, but no later than 15 years after we establish the refuge. Convert refuge long-range management plans (*e.g.*, master plans and refuge management plans) approved prior to October 9, 1997, into CCPs with appropriate public involvement and NEPA compliance no later than October 2012.

E. Step-Down Management Plans. Step-down management plans provide the details (strategies and implementation schedules) necessary to meet goals and objectives identified in the CCP. CCPs will either incorporate or identify step-down management plans required to fully implement the CCP. After completion of the CCP, modify existing step-down management plans to accomplish stated goals and objectives as needed. See 602 FW 4.

F. Integration With Budget Development and Implementation. We will use CCPs to guide annual budget requests. We will identify the unfunded costs of implementing strategies in refuge plans using our budget databases, including the Refuge Operating Needs System (RONS), Maintenance Management System (MMS), and Land Acquisition Priority System (LAPS). As we complete or update each plan, we will review and update these databases to incorporate projects identified in CCPs. The total funding and staffing identified in these databases represents the additional resources required to fully implement the refuge plans.

1.8 Who is responsible for implementing our policy?

A. Director. The Director is responsible for providing national policy and ensuring adherence to refuge planning policy.

B. Regional Director. The Regional Director: (1) Ensures compliance with national planning policy, NEPA, and other applicable laws and policies; (2) approves CCPs, amendments to CCPs, and associated NEPA and other agency compliance documents; and (3) ensures that we manage refuges in accordance with approved CCPs. The Regional Director or designee approves step-down management plans, determines planning priorities, and allocates funds to develop and implement plans.

C. Regional Chief, National Wildlife Refuge System. The Regional Chief, National Wildlife Refuge System, is responsible for initiating and completing refuge plans, budgeting for planning, ensuring programmatic staff participation, and developing regional planning priorities. The Special Assistant for Ecosystems is responsible for ensuring that ecosystem teams participate in developing plans and implementing approved plans.

D. Refuge Planning Coordinator. The Washington Office, Division of Refuges, and each Region will designate a Refuge Planning Coordinator. In cooperation with representatives of our National Conservation Training Center, the Coordinators will establish and maintain appropriate training courses. Refuge Planning Coordinators will provide guidance and direction to assist Planning Team Leaders, regional and field-based planning staff, and planning team members. The Coordinators also are responsible for maintaining regional planning schedules and updating status reports and funding needs for the planning program. The Coordinators periodically will meet to review and recommend changes to planning policy, resolve common planning problems and issues, and help ensure national consistency.

E. Planning Team Leader. The Planning Team Leader is responsible for initiation of the planning process, preparation and completion of refuge plans, and ensuring that we meet compliance requirements. The Planning Team Leader, in consultation with the Refuge Manager, is responsible for identifying appropriate and proper representation on the interdisciplinary planning team, including team members, support personnel, and outside or contract assistance. The Refuge Manager and Planning Team Leader will submit the final CCP through line supervision for concurrence and approval by the Regional Director.

F. Refuge Supervisor. The Refuge Supervisor is responsible for overseeing participation of the Refuge Manager in CCP preparation and implementation, and for providing direction and guidance on compliance with Refuge System policy and regulations. Once the Planning Team Leader and Refuge Manager submit the plan, the Refuge Supervisor will be responsible for review and concurrence of the plan prior to its submission to the next level.

G. Refuge Manager. The Refuge Manager participates in the preparation of the CCP working closely with the Planning Team Leader. The Refuge Manager assures that the refuge staff participates in plan development. The Refuge Manager and Planning Team Leader submit the final CCP through line supervision for concurrence and approval by the Regional Director. The Refuge Manager is responsible for: making compatibility determinations; implementing approved CCPs and step-down management plans; tracking progress; and recommending changes to plans based on monitoring and evaluation. The Refuge Manager also reports plan accomplishments through standard reporting mechanisms and budgeting procedures.

H. Planning Team. The planning team, coordinated by the Planning Team Leader, is responsible for the initiation and completion of all planning steps, including public involvement and NEPA compliance, resulting in a refuge CCP. We describe the steps in 602 FW 3.4C. The planning team is responsible for the CCP's content in terms of information relating to management of refuge resources and use activities. The planning team will ensure that the CCP, when implemented, will achieve the purposes of the refuge and help fulfill the Refuge System mission.

I. Regional Environmental (NEPA) Coordinator. The Regional Environmental (NEPA) Coordinator provides technical assistance on NEPA-related matters.

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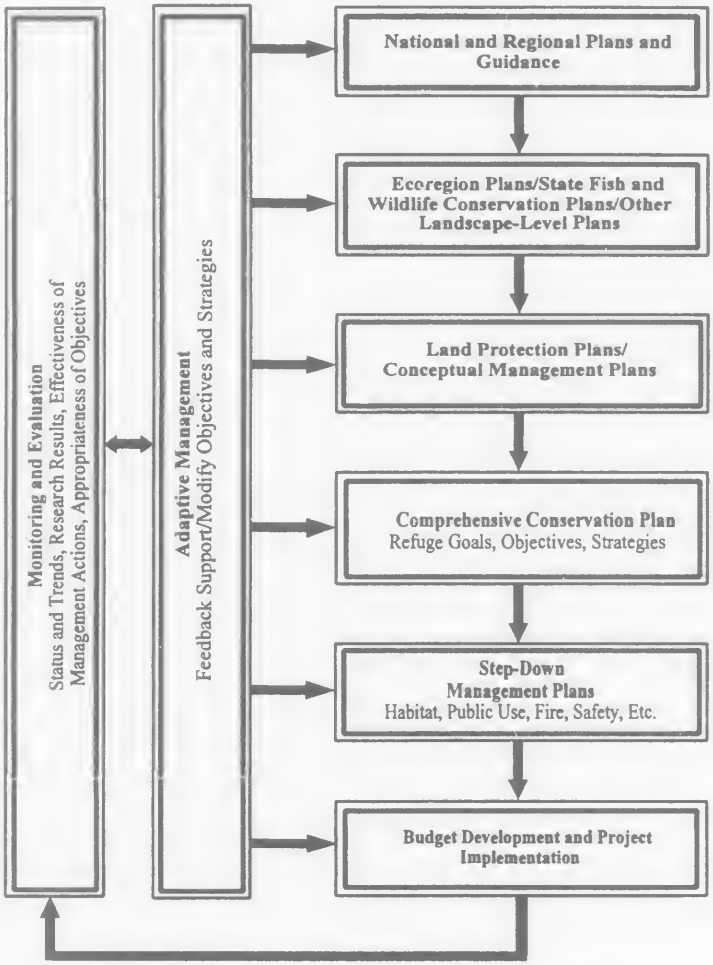
Exhibit 1-1

Relationships Between Service, System, and Other Planning Efforts



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Refuge Management—Part 602 National Wildlife Refuge System Planning

Chapter 3 Comprehensive Conservation Planning Process 602—FW 3

3.1 What is the purpose of this chapter? Comprehensive Conservation Plans (CCPs) describe the desired future conditions of a refuge and provide long-range guidance and management direction to achieve refuge purposes; help fulfill the National Wildlife Refuge System (Refuge System) mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The purpose of this chapter is to describe a systematic decision-making process that fulfills the requirements we are establishing for developing a CCP. This policy provides guidance, step-by-step direction, and establishes minimum requirements for all CCPs. Experienced planners lead the CCP process. We require all of our planners and strongly encourage Refuge Managers and other key planning team members attend the National Conservation Training Center (NCTC) course on Refuge Comprehensive Conservation Planning.

3.2 What is our policy for CCPs? The U.S. Fish and Wildlife Service (Service or we) must manage all national wildlife refuges according to an approved CCP. We will prepare a CCP by October 2012, for each refuge in existence at the time of passage of the National Wildlife Refuge System Improvement Act. For refuges established after passage of this Act, we will prepare CCPs when we staff the refuge and acquire a land base sufficient to achieve refuge purposes, but no later than 15 years after establishment of the refuge. To the extent practicable, we will coordinate the development of CCPs with affected States. We will continue to manage each refuge or planning unit with existing plans effective prior to October 9, 1997, to the extent these plans are consistent with the Refuge Administration Act, until we revise such plans or new CCPs supersede them. Upon completion of a CCP, we will manage the refuge or planning unit in a manner consistent with the CCP. We will revise the CCP every 15 years thereafter, or earlier, if monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, goals, or objectives.

3.3 What are our goals for Comprehensive Conservation Planning?

A. To ensure that wildlife comes first in the National Wildlife Refuge System and that we manage each refuge to help fulfill the mission of the Refuge System, maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System, as well as achieve the specific purposes for which the refuge was established.

B. To provide a clear and comprehensive statement of desired future conditions for each refuge or planning unit.

C. To encourage use of an ecosystem approach when we conduct refuge planning. This includes conducting concurrent refuge planning for refuges within the same watershed or ecosystem and considering the broader goals and objectives of the refuges' ecosystems and watersheds when developing management direction (see Ecosystem Approach to Fish and Wildlife Conservation [Part 052 of the Service Manual]).

D. To support management decisions and their rationale by using a thorough assessment of available science derived from scientific literature, on-site refuge data, expert opinion, and sound professional judgment.

E. To ensure that the six priority wildlife-dependent recreational uses receive priority consideration during the preparation of CCPs.

F. To provide a forum for the public to comment on the type, extent, and compatibility of uses on refuges, including priority wildlife-dependent recreational uses.

G. To provide a uniform basis for budget requests for operational, maintenance, and capital improvement programs.

H. To ensure public involvement in refuge management decisions by providing a process for effective coordination, interaction, and cooperation with affected parties, including Federal agencies, State conservation agencies, Tribal governments, local governments, conservation organizations, adjacent landowners, and interested members of the public.

3.4 What is the Comprehensive Conservation Planning process?

A. The CCP process (see Exhibit 3–1) provides consistent guidelines for developing CCPs. We designed the planning process to result in the development of vision statements, goals, objectives, and strategies that achieve refuge or planning unit purpose(s); help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates.

B. Each CCP will comply with the provisions of the National Environmental Policy Act (NEPA) through the concurrent preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) that will accompany or be integrated with the CCP. We have integrated NEPA compliance requirements directly into the CCP process. When preparing an EA, consider integrating it into the draft CCP. When preparing an EIS with a CCP, integrate the documents. Following completion of the final CCP/NEPA document, the product of the planning process will be a stand-alone CCP, separate from the EA or EIS.

C. Our CCP planning process consists of the following eight steps. Although we display the steps sequentially, CCP planning and NEPA documentation are iterative processes. Cycling through some of the steps more than once or having several steps occurring simultaneously is normal. Actions within each of the eight steps may not be sequential.

(1) Preplanning: Planning the Plan

(a) Planning Team. The Regional Chief, National Wildlife Refuge System, appoints the Planning Team Leader. The Planning Team Leader assembles the planning team, which consists of the Planning Team Leader, the Refuge Manager and key staff members, and appropriate support staff or specialists from both regional and field offices (*e.g.*, fisheries, cultural resources, endangered species, external affairs/outreach, realty, contaminants, migratory birds, water resources, etc.). We will provide representatives from appropriate State and Tribal conservation agencies, and any public agency that may have a direct land management relationship with the refuge, the opportunity to serve on planning teams. The Planning Team Leader will prepare a formal written request for participation by appropriate State and Tribal conservation agencies for signature by the Regional Director. Included in this request is an invitation to attend the NCTC course on Refuge Comprehensive Conservation Planning. Participation by these State and Tribal agencies shall not be subject to the Federal Advisory Committee Act.

(b) Identify Refuge Purpose(s), History, and Establishing Authority. Document the history of refuge establishment and management, as well as refuge purposes and authorizing authority (*e.g.*, legislation [including wilderness designation, if applicable], executive orders, administrative memoranda) (*see* 601 FW 1). These will become driving forces in the process and subsequently be reflected in the

refuge vision statement, goals, objectives, and strategies in the CCP.

(c) Identify Planning and Compliance Requirements and Special Designations. Review our agency and Refuge System mission statements and policies, as well as other existing legislation to help identify planning and compliance requirements. *See* Exhibit 3–2 for a list of laws and executive orders that may apply and Exhibit 3–3 for a checklist of elements we must include within a CCP. Identify and review other Service guidance such as Fulfilling the Promise: The National Wildlife Refuge System and mandates including laws, executive orders, regulations, and our policies, especially those with compliance requirements. Also review any existing special designation areas such as wilderness, research natural areas, wild and scenic rivers, wetlands of international importance (Ramsar sites), Western Hemisphere Shorebird Reserves, etc., and specifically address the potential for any new special designations. Concurrent with the CCP process we will conduct a wilderness review and incorporate a summary of the review into the CCP. (*See* Part 610 of the Service Manual for guidance on conducting wilderness reviews.) Complete the inventory phase of the review during preplanning. If a Wilderness Study Area is identified, proceed with the study and recommendation phases of the review. (Note: An EIS is the NEPA document we must include in a recommendation or report on a legislative proposal to Congress [40 CFR 1506.8]. This requirement applies to all CCPs that contain wilderness recommendations.)

(d) Purpose and Need for the Plan. The purpose of developing the CCP is to provide the Refuge Manager with a 15-year management plan for the conservation of fish, wildlife, and plant resources and their related habitats, while providing opportunities for compatible wildlife-dependent recreational uses. The CCP, when fully implemented, should achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP must be specific to the planning unit and identify the overarching wildlife, public use, or management needs for the refuge.

(e) Planning Area and Data Needs. Delineate the planning area on a map. Identify the relationship between the planning unit and its ecosystem(s) and watershed(s) as well as relationships between the planning unit and any other refuges or other important fish and wildlife habitats in the vicinity. Identify data available to address issues discussed in Step (h) Internal Scoping. Obtain information from Federal, Tribal, State and local agencies, and private landowners concerning land management issues that may impact or relate to the planning unit. To assist in determining species or resources of concern, consult the following: Federal threatened and endangered species lists; Migratory Nongame Birds of Management Concern in the United States; Partners in Flight Watch List; State lists of rare, threatened, endangered, or species of concern; National Audubon Society State Watch Lists; The Nature Conservancy's heritage program and ranking system; as well as State heritage databases and conservation data centers for additional sources of information. Also identify resource experts familiar with the key species and habitats in the planning area, and consult with these experts during the development of habitat objectives. Base CCPs on a comprehensive assessment of the existing scientific literature. Potential sources of information include planning documents, EAs, EISs, annual narrative reports, information from previously conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. While we may not be able to develop new data for the CCP, we may identify the need for further data collection. A lack of data should not delay the completion of the CCP. Identify and describe the following conditions and their trends for the planning unit and, as appropriate, for the planning area:

(i) Context of the planning unit in relation to the surrounding ecosystem.

(ii) Structures, components, and functions of the ecosystem(s) of which the planning unit is a part.

(iii) Natural and historic role of fire and other natural occurrences affecting ecological processes.

(iv) Past land use and history of settlement, including a description of any changes in topography, hydrology, and other factors.

(v) Current and historic description of the flora and fauna and the diversity of habitats and natural communities.

(vi) Distribution, migration patterns, and abundance of fish, wildlife, and plant populations, including any threatened or endangered species, and related habitats.

(vii) Fish, wildlife, and plants and their habitats and communities that are rare and/or declining within the ecosystem.

(viii) Water resources including quality and quantity.

(ix) Archaeological and other cultural resources.

(x) Significant problems that may adversely affect the ecological integrity or wilderness characteristics and the actions necessary to correct or mitigate the problems.

(xi) Identify opportunities to improve the health of habitats or the functioning of ecosystems.

(xii) Significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants (including candidate, threatened, and endangered species) and the actions necessary to correct or mitigate the problems.

(xiii) Known or suspected sources of environmental contaminants and their potential impacts on the planning unit (refer to the Contaminant Assessment Program).

(xiv) Land acquisition or habitat protection efforts.

(xv) Habitat management practices.

(xvi) Existing administrative resources, including staffing, funding, and facilities.

(xvii) Existing transportation patterns and related visitor facilities.

(xviii) Potential need for administrative sites, transportation improvements, or visitor facilities and areas within the planning unit that are suitable for such sites.

(xix) Existing and potential opportunities for wildlife-dependent recreation.

(xx) Existing special management areas, or the potential for such designations (*e.g.*, wilderness, research natural areas, and wild and scenic rivers).

(f) Review All Available Information, Plans, Data, Maps, and Data Standards. Based on this review, determine what the initial planning area includes and identify any additional information and data needs, including mapping and GIS needs. Note: All Federal agencies and their contractors must comply with data standards endorsed by the Federal Geographic Data Committee (Executive Order 12906; 59 FR 17671, April 13, 1994). Of particular relevance to refuge planning are the National Vegetation Classification Standard (FGDC–STD–005) and the Classification of Wetlands and Deep Water Habitats (FGDC-STD–004). Compliance with these standards will facilitate the sharing and exchange of high-quality vegetation and wetland data among Federal agencies and their

partners. We also are developing other data standards, such as cartographic standards for delineation of refuge boundaries and land status.

(g) Vision and Goals. Review the existing planning unit vision statement and goals and determine the need for revision. If these do not exist, prepare a draft vision statement and goals for consideration during public scoping. The vision statement should focus on what will be different in the future because of our efforts, capture the essence of what we are trying to do, and why. It should be future-oriented, concise, clear, compelling, and give a sense of purpose to our efforts. At a minimum, each refuge should develop goals for wildlife species or groups of species, habitat (including land protection needs), compatible wildlife-dependent recreation, other mandates (such as refuge-specific legislation, executive orders, special area designations, etc.), and fish, wildlife, and plant populations, as appropriate. The vision statement and goals will reflect planning unit purposes; help fulfill the mission of the Refuge System; maintain and, where appropriate, restore ecological integrity; and will be consistent with mandates and principles of sound fish and wildlife management. Planning unit goals also will reflect our ecosystem goals to the extent these goals do not conflict with the Refuge System mission or the purposes for which the refuge was established. We also may develop refuge goals for our other mandates. Subsequently, we will develop objectives for achieving planning unit goals (see 602 FW 3.4 C (4)(d) Objective Development). For additional information on developing goals and objectives, see the current edition of Writing Refuge Management Goals and Objectives: A Handbook.

(h) Internal Scoping. Begin the internal scoping process by identifying management concerns, issues, and opportunities to resolve them, as well as any potential impacts and alternatives that we may need to address in the CCP and NEPA analysis. Review the background, rationale, and the success or failure of any controversial management actions and identify any additional information and data needed where appropriate.

(i) Public Involvement/Outreach Planning. Prepare a Public Involvement/Outreach Plan indicating how and when we will invite the affected public to participate in CCP development. This plan will include establishing a mailing list and identifying appropriate techniques and materials to use in public involvement. We integrate public involvement and outreach into each step, and it continues throughout the planning process. For additional information on public involvement techniques, consult the Public Participation Handbook (U.S. Fish and Wildlife Service, 1985) or the NCTC Refuge Comprehensive Conservation Planning Course Handbook and Reference Notebook.

(j) Work Plan/Planning Schedule. Establish a work plan or planning schedule for the CCP. Determine who will be responsible for carrying out identified tasks, gathering information and data, and preparing products identified in the work plan or schedule. Identify all key NEPA compliance steps and public involvement activities. Identify any additional expertise, besides the planning team, required to prepare the CCP. This may include an economist, a facilitator for public and other meetings, other contracted professional services, etc.

(k) Planning Record. Establish a planning record to document the preparation of the CCP and NEPA compliance, and assign its maintenance to a team member. The planning record will serve as a valuable reference and provide important background and historical information. If there is a legal challenge to the CCP, use the planning record to construct the administrative record. For additional information on the planning record, consult the NCTC Refuge Comprehensive Conservation Planning Course Handbook and Reference Notebook.

(2) Initiate Public Involvement and Scoping

(a) Notice of Intent. Prepare a Notice of Intent (NOI) to prepare a CCP, with appropriate NEPA compliance, and publish the NOI in the **Federal Register**. The NOI initiates public scoping for the CCP/NEPA planning and decision-making process. If we initially determine that we will prepare an EIS for the CCP, the NOI should specify that. If at any time during the planning process we decide to prepare an EIS, we will publish in the **Federal Register** a new NOI to prepare an EIS and provide additional time for the public to comment. Should we publish a new NOI, we will use news releases and other appropriate means to notify the public.

(b) Public Scoping. Using news releases to the local media and other appropriate means, notify the affected public of the opportunity to participate in the preparation of the CCP and begin the scoping process. Involve the public and gather comments on any existing planning unit vision statement and goals. Encourage the public to help identify potential issues, management actions and concerns, significant problems or impacts, and opportunities or alternatives to resolve them. Public scoping will continue until we prepare a draft CCP/NEPA document.

(c) Issues and Data Needs. Analyze all comments gathered and recorded during the scoping process. Identify any new information, issues, concerns, or significant problems, opportunities to resolve them, and potential refinements or revisions of any existing planning unit vision statement and goals. Based on this analysis, identify any additional information and data needed.

(3) Review Vision Statement and Goals and Determine Significant Issues

(a) Vision and Goals. Review and evaluate the public's comments on the planning unit vision statement and goals. Based on this review, modify the vision and goals for the planning unit as appropriate.

(b) Determine Significant Issues. Review and evaluate all potential issues, management concerns, and problems and the opportunities to resolve them that the planning team and the public have identified. Identify those issues and concerns that are significant, and the appropriate scale at which to consider those issues. Document the rationale for selecting significant issues, as well as the rationale for not selecting the other issues and concerns (*e.g.*, outside the scope of the CCP, does not contribute to achieving refuge purposes, Refuge System mission, etc.). Significant issues typically are those that are: Within our jurisdiction, suggest different actions or alternatives, and will influence our decision. We will refer those issues identified outside the scope of refuge planning to the pertinent Service program office or division.

(4) Develop and Analyze Alternatives, Including the Proposed Action

This part of the process is not sequential, it is iterative. Iterative procedures in this step of the process include: Issue assessment; refinement and development of goals, objectives, and strategies; analysis and comparison of impacts and benefits of management actions; and the packaging or combining of similar themes or programs to develop preliminary alternatives and assessment of their environmental consequences. The alternatives should reflect different sets of objectives and strategies to achieve refuge purposes, vision, and goals, help fulfill the Refuge System mission, and resolve issues. Prepare maps depicting the different strategies reflected in each alternative. Also display this information in a

matrix comparing issues, impacts, and benefits for each alternative.

(a) No Action Alternative. Define the No Action Alternative, which is usually a continuation of current planning unit objectives and management strategies, with no changes or changes that would have occurred without the CCP.

(b) A Range of Alternatives. Develop a range of alternatives, or different approaches to planning unit management, that we could reasonably undertake to achieve planning unit goals and refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; meet other mandates, and resolve any significant issues identified. Alternatives consist of different sets of objectives and strategies for management of the refuge. Give equal effort to each alternative regarding specific objectives and strategies so that the decision maker can make an informed choice. NEPA requires an equal and full analysis of all alternatives considered for implementation.

(c) Proposed Action. The planning team will recommend a proposed action in the NEPA document for the CCP identifying the alternative that best achieves planning unit purposes, vision, and goals; helps fulfill the Refuge System mission; maintains and, where appropriate, restores the ecological integrity of each refuge and the Refuge System; addresses the significant issues and mandates; and is consistent with principles of sound fish and wildlife management. The proposed action is, for all practical purposes, the draft CCP for the planning unit.

(d) Objective Development. Develop objectives to address each goal. Word objectives so it is clear what we can measure during monitoring to assess progress toward their attainment. Consult the Service Manual chapters on habitat management, populations management, wilderness management, and wildlife-dependent recreation during the development of objectives. Develop detailed, measurable objectives using available scientific literature and other appropriate information. Develop objectives with consideration of regional and Service ecosystem goals and objectives. Develop objectives for specific refuge habitat types, management units, key species (*e.g.*, migratory birds and threatened and endangered species), wildlife-dependent recreation, monitoring populations of fish, wildlife, and plants and their habitats, and other areas of management, as appropriate. Objectives also may deal with refuge information needs (for example, including the development of baseline data), administrative needs, and any other issues we need to address to meet the goals of the refuge. Document in a short narrative summary the rationale, including appropriate literature citations, that supports each objective. Also consult the current edition of Writing Refuge Management Goals and Objectives: A Handbook. Developing detailed objectives at this stage will expedite development of step-down management plans when required.

(e) Strategy Development. Develop strategies to identify the specific actions, tools, or techniques that are necessary to accomplish each objective. Strategies represent specific projects that provide the detail required to assess and develop funding, staffing, and partnerships needed to implement the plan. Develop inventory and monitoring strategies to measure implementation results in quantifiable and verifiable ways. We may require step-down management plans to provide the specific details of how to achieve goals and objectives identified in the CCP.

(f) Environmental Consequences. Assess the environmental consequences (direct, indirect, and cumulative) of implementing each alternative as required by NEPA. Compare the consequences of implementing each alternative in relation to the No Action Alternative, which serves as a baseline. Describe the adverse and beneficial impacts of implementing each alternative on fish, wildlife, and plants, and their habitats; any threatened or endangered species; cultural resources; the local economy; the ability to provide opportunities for compatible wildlife-dependent recreational uses; conflicts between priority uses and other uses; and other issues identified earlier in the planning process. This analysis must provide the level of detail necessary to assess the compatibility of all proposed uses. Describe each alternative's ability to achieve planning unit purpose(s), vision, and goals; help fulfill the Refuge System mission; ensure that we maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; and address the significant issues and mandates. This assessment also will identify the funding, staffing, and facilities required for implementation of each alternative.

(5) Prepare Draft Plan and NEPA Document

(a) Draft CCP and NEPA Document. Concurrently prepare the draft CCP and appropriate NEPA documentation (EA or EIS). When preparing an EA, consider integrating the draft CCP with the EA. When preparing an EIS with a CCP, integrate the documents. If the decision is to prepare a separate EA, see Exhibit 3–4 for a recommended CCP outline. If the documents are separate, the proposed action in the EA must contain all of the major actions of the draft CCP. If the decision is to merge the CCP and EA, see Exhibit 3–5 for a recommended outline. During the process of preparing the CCP, refer to Exhibit 3–3 to ensure inclusion of all required elements in the plan. Ensure compliance regarding other programs and policies, including: Section 7 of the Endangered Species Act; Sections 401 and 404 of the Clean Water Act; Sections 106 and 110 of the National Historic Preservation Act; Section 14 of the Archaeological Resources Protection Act; Executive Order 13007—Indian Sacred Sites; Executive Order 11988—Floodplain Management; Executive Order 11990—Protection of Wetlands; etc. See Exhibit 3–2 for a list of mandates to consider during the planning process.

(b) Compatibility Determinations. Complete new compatibility determinations or re-evaluate existing compatibility determinations as part of the CCP process for all individual uses, specific use programs, or groups of related uses associated with the proposed action. Prepared concurrently with the CCP, incorporate the draft compatibility determinations into the draft CCP as an appendix. We require public review and comment for all compatibility determinations. We can achieve this concurrently through public review and comment of the draft CCP and NEPA document. While other alternatives do not require compatibility determinations, assess the environmental consequences, and, for all practical purposes, compatibility of all uses proposed in those alternatives in the NEPA document. For additional information on compatibility determinations, see 603 FW 2.

(c) Pre-acquisition Compatibility Determinations. If our proposed action includes expanding the planning unit by acquiring new lands, the draft CCP and NEPA documents also must identify any existing wildlife-dependent recreational public uses deemed compatible that we will allow to continue after acquisition. Incorporate these pre-acquisition compatibility determinations into the draft CCP and NEPA document.

(d) Internal Review. Submit the draft CCP and NEPA document for internal review within the Region following established procedures. Include in the review refuge program managers,

ecosystem managers, refuge staff and other appropriate Service programs and divisions, as well as other agency partners. Also submit these documents for internal review to the Regional and Washington Office Planning Coordinators. Consider all comments received from the internal reviews and make appropriate changes to the draft document. Print the draft CCP and NEPA document and prepare for public review.

(e) Public Notice, Review, and Comment. Prepare a Notice of Availability of the draft CCP and NEPA document and publish it in the **Federal Register**. Notify the affected public of the availability of these documents through other appropriate means, as identified in the Public Involvement/Outreach Plan. Public notices will make clear that we are seeking concurrent review on compatibility determinations. Provide a minimum of 30 days for public review of a draft CCP with an EA and 45 days for a draft CCP with an integrated EIS. Make copies of the draft CCP and NEPA document available to appropriate elected officials; Federal, State, and local agencies; Tribal governments; organizations; libraries (including NCTC); resource experts; adjacent landowners; and individuals requesting them. Conduct appropriate public involvement activities as called for in the Public Involvement/Outreach Plan. Document all public comments, both written and oral, received on the draft CCP and NEPA document as part of the planning record.

(6) Prepare and Adopt Final Plan

(a) Public Comment, Analysis, and Response. Review and analyze all written and oral comments received from the public on the draft CCP and NEPA document. Determine which comments are substantive and warrant written response. Modify the document(s) as appropriate. Prepare a summary of the public comments received and a statement of the disposition of concerns expressed in those comments, noting where we have changed the document(s) or why we did not make such changes. Incorporate the summary and statement of disposition into the final document(s) (usually in the NEPA document or a CCP appendix).

(b) Final CCP and NEPA Document(s). Identify the preferred alternative and prepare the final CCP and appropriate NEPA documentation. The preferred alternative can be the proposed action, the no action alternative, another alternative, or a combination of actions or alternatives discussed in the draft CCP and NEPA document. Following completion of the final CCP/NEPA document, the product of the CCP process is a stand-alone CCP (the preferred alternative for the planning unit). During the process of preparing the final plan, refer to Exhibit 3–3 to ensure inclusion of all required elements.

(c) Internal Review. Submit the final document(s) for internal review within the Region according to established procedures. Refer to 3.4 C (5)(d) for a list of those to include in the review. Consider all comments received from the internal review and make appropriate changes to the final document(s).

(d) Decision Document. The decision document (either a Finding of No Significant Impact [FONSI] or a Record of Decision [ROD]) will certify that we have met agency compliance requirements and that the CCP, when implemented, will achieve the purposes of the refuge and help fulfill the Refuge System mission.

(i) CCP with an EA and FONSI. The Refuge Manager and Planning Team Leader submit the final CCP and FONSI through line supervision for concurrence and approval by the Regional Director. The Regional Director will sign and date both the FONSI and the final CCP. Following approval, print and distribute the final document(s) and appropriate appendices. Provide the FONSI to all interested and affected parties. Concurrent with the distribution of the FONSI, provide the final, approved, stand-alone CCP or a summary to all interested parties. In some cases we may require a 30-day public review period for the FONSI (see 550 FW 3.3 B (4)(c)). In these cases, we may not sign or release the final CCP until the end of the 30-day review.

(ii) CCP with an EIS and ROD. The Refuge Manager and Planning Team Leader submit the final EIS/CCP through line supervision for concurrence and approval to release these documents to the public. Provide these documents to interested and affected parties for at least 30 days prior to issuing a ROD. Following this period, submit the ROD through line supervision for concurrence and approval by the Regional Director. The Regional Director will sign and date both the ROD and the final CCP. Following approval, print the final documents and appropriate appendices. Provide the ROD or notification of its availability to all interested and affected parties. Concurrent with the release of the ROD, provide or make available the final, approved, stand-alone CCP or a summary to interested parties. Effective with the signing and release of the ROD, implement the CCP.

(iii) Stand-Alone CCP. The final product of the CCP process is a stand-alone CCP (the preferred alternative for the planning unit).

(e) Public Notice. Prepare a Notice of Availability of the final approved CCP and NEPA document(s) and publish it in the **Federal Register**. Notify the affected public of the availability of the final document(s) through other appropriate means, as identified in the Public Involvement/Outreach Plan. Send copies of all final documents to the Regional and Washington Office Planning Coordinators. Make copies of the final approved CCP and NEPA document(s) available to appropriate elected officials; Federal, State, and local agencies; Tribal governments; organizations; libraries (including NCTC); adjacent landowners; and individuals requesting them.

(7) Implement Plan, Monitor, and Evaluate

Following approval of the CCP and public notification of the decision, begin implementing the strategies identified in the CCP. Allocate funding and staff time to the priority strategies as defined in the CCP. Initiate the monitoring and evaluation process identified in the CCP to determine if we are making progress in achieving the planning unit purpose(s), vision, and goals. Monitoring should address habitat or population objectives, and the effects of management activities. See 701 FW 2. Describe the sampling design sufficiently so it may be replicated. Through adaptive management, evaluation of monitoring and research results may indicate the need to modify refuge objectives or strategies.

(8) Review and Revise Plan

(a) Plan Review. Review the CCP at least annually to decide if it requires any revisions. Modify the plan and associated management activities whenever this review or other monitoring and evaluation determine that we need changes to achieve planning unit purpose(s), vision, and goals.

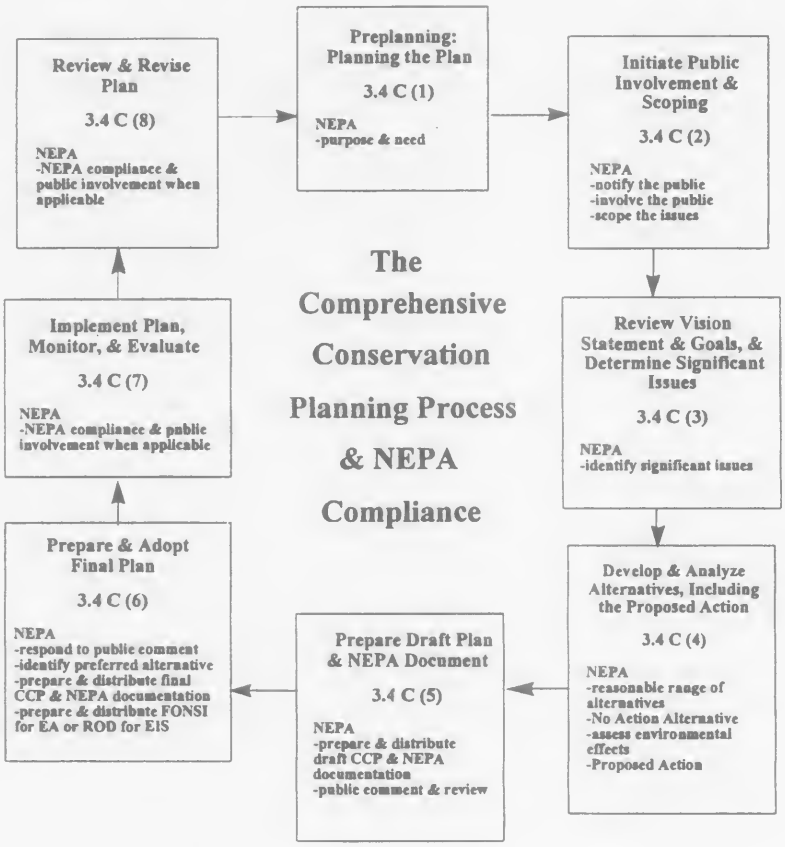
(b) Plan Revision. Revise the CCP when significant new information becomes available, ecological conditions change, major refuge expansion occurs, or when we identify the need to do so during plan review. This should occur every 15 years or sooner, if necessary. All plan revisions should follow the procedures outlined in this policy for preparing plans and will require NEPA compliance. Document minor plan revisions that meet the criteria of a

categorical exclusion in an Environmental Action Statement, in accordance with 550 FW 3.3 C. Contact the Regional NEPA Coordinator for an up-to-date list of categorical exclusions and for other NEPA assistance. If the plan requires a major revision, then the CCP process starts anew at the preplanning step. See 602 FW 3.4 C (1).

(c) Ongoing Public Involvement. Continue informing and involving the public through appropriate means.

BILLING CODE 4310–55–P

Exhibit 3-1



Note: Although the steps are sequential, CCP planning and NEPA documentation are iterative processes. It is normal to cycle through some of the steps more than once or to have several steps occurring simultaneously. Actions within each of the eight steps may not be sequential.

BILLING CODE 4310–55–C

Exhibit 3–2.—Mandates To Consider During Comprehensive Conservation Planning

	Yes/No
Applicable Statutes:	
Alaska National Interest Lands Conservation Act of 1980, as amended	
American Indian Religious Freedom Act of 1978	
Americans With Disabilities Act of 1990	
Anadromous Fish Conservation Act of 1965, as amended	
Antiquities Act of 1906	
Archaeological and Historic Preservation Act of 1974	
Archaeological Resources Protection Act of 1979, as amended	
Bald and Golden Eagle Protection Act of 1940, as amended	
Clean Air Act of 1970	
Clean Water Act of 1974, as amended	
Coastal Zone Management Act of 1972, as amended	
Emergency Wetlands Resources Act of 1986	
Endangered Species Act of 1973, as amended	
Farmland Protection Act of 1981, as amended	
Federal Cave Protection Act of 1988	
Federal Noxious Weed Act of 1990	
Fish and Wildlife Act of 1956	
Fish and Wildlife Coordination Act of 1958	
Fishery (Magnuson) Conservation and Management Act of 1976	
Marine Mammal Protection Act of 1972, as amended	
Migratory Bird Conservation Act of 1929	
Migratory Bird Hunting and Conservation Stamp Act of 1934	
Migratory Bird Treaty Act of 1918, as amended	
National Environmental Policy Act of 1969	
National Historic Preservation Act of 1966, as amended	
National Wildlife Refuge System Administration Act of 1966, as amended	
Native American Graves Protection and Repatriation Act of 1990	
Refuge Recreation Act of 1962, as amended	
Rivers and Harbors Act of 1899	
Water Resources Planning Act of 1965 (sole-source aquifers)	
Wild and Scenic Rivers Act of 1968, as amended	
Wilderness Act of 1964, as amended	
Applicable Executive Orders:	
Executive Order 11644, Use of Off-Road Vehicles on Public Lands	
Executive Order 11987, Exotic Organisms	
Executive Order 11988, Floodplain Management	
Executive Order 11990, Protection of Wetlands	
Executive Order 12898, Environmental Justice for Minority Populations	
Executive Order 12962, Recreational Fisheries	
Executive Order 12996, Management and General Public Use of the National Wildlife Refuge System	
Executive Order 13007, Indian Sacred Sites	
Executive Order 13084, Consultation and Coordination With Indian Tribal Governments	

Note: This list is not all inclusive. There may be other executive orders and statutes that apply to a particular planning unit.

Exhibit 3–3.—Checklist of Required Comprehensive Conservation Plan Elements

___Short description of the planning unit to include:
___Size
___Establishment date
___Regional setting (include area map)
___Land acquisition or habitat protection efforts
___Current management (including a map)
___Current staffing
___Existing partnerships
___Purpose(s) for which the refuge was established
___Past land use and history of settlement, including a description of any changes in topography, hydrology, and other factors
___Existing transportation patterns and related visitor facilities
___Habitat management practices
___Refuge System mission and goals.
___Ecosystem goals and objectives.
___Goals and objectives for other landscape-level plans.
___National goals and objectives for species, species groups, habitats and communities, or programs (*e.g.*, shorebirds, an endangered species, priority public use program).
___Identify any mandates that apply to the area or the proposed plan.
___Description of the planning unit environment to include:
___distribution, migration patterns, and abundance of fish, wildlife, and plant populations, including any threatened or endangered species and related habitats;
___current and historic description of the flora and fauna, and the diversity of habitats and natural communities;
___wildlife habitat and species relationships;
___ability of the planning unit to meet the habitat needs of fish, wildlife, and plants, as they occur throughout their natural ranges;
___vegetation types (Federal Geographic Data Committee compliant map required);
___vegetation/land cover and wildlife habitat relationships;
___significant problems that may adversely affect the ecological integrity or wilderness characteristics and the actions necessary to correct or mitigate the problems;
___context of the planning unit in relation to the surrounding ecosystem;
___structures, components, and functions of the ecosystem(s) of which the planning unit is a part;
___fish, wildlife, and plants and their habitats and communities that are rare and/or declining within the ecosystem;
___archaeological and cultural resources of the planning unit;
___refuge land status map;
___natural and historic role of fire and other natural occurrences affecting ecological processes;

___existing special management areas (*e.g.*, wilderness, wild and scenic rivers);
___relationship between the planning unit and other refuges and protected areas.
___Document and describe the following:
___significant problems that may adversely affect the populations and habitats of fish, wildlife, and plants within the planning unit (including candidate, threatened, and endangered species) and the actions necessary to correct or mitigate such problems;
___water resources including quantity and quality;
___known or suspected sources of environmental contaminants and their potential impacts on the planning unit (refer to the Contaminant Assessment Program);
___potential for special management area designations (*e.g.*, wilderness, research natural areas, and wild and scenic rivers);
___summary of management history;
___other significant issues of management or public concern;
___existing and potential opportunities for wildlife-dependent recreation;
___existing administrative resources, including staffing, funding, and facilities;
___potential need for administrative sites, transportation improvements, or visitor facilities and areas within the planning unit that are suitable for such sites.
___Vision statement.
___Goals for at least the following areas:
___wildlife species or groups of species;
___habitat (including land protection needs);
___fish, wildlife, and plant populations, as appropriate;
___compatible wildlife-dependent recreation;
___others as needed to meet mandates (such as refuge-specific legislation, executive orders, special area designations, etc.).
___Objectives for each goal.
___Strategies to achieve each objective.
___Map(s) of desired future conditions (*e.g.*, habitat management areas, facilities, wildlife-dependent recreation sites, etc.).
___Identification of step-down management plans required to fully implement the CCP.
___Prioritized list of projects and estimated project costs (update priorities and cost estimates annually).
___Staffing and funding required to implement the plan.
___Potential partnership opportunities.
___Monitoring plan to evaluate the effectiveness of the plan and project implementation, including monitoring of target fish, wildlife, and plant populations and their habitats.
___Summary of public involvement process, comments received and their disposition, and consultation and coordination with other Federal agencies, State conservation agencies, and adjacent landowners.
___Compatibility determinations (including pre-acquisition compatibility determinations).
___Wilderness review.
___Habitat/Land Protection Plans (if applicable).
___NEPA documentation.

Exhibit 3–4.—Refuge Comprehensive Conservation Plan Recommended Outline

Cover Sheet
Title/Approval Page
Acknowledgments
Table of Contents
Summary
I. Introduction/Background
  Refuge Overview: History of Refuge Establishment, Acquisition, and Management
  Purpose of and Need for Plan
  NWRS Mission, Goals, and Guiding Principles
  Refuge Purpose(s)
  Refuge Vision Statement
  Legal and Policy Guidance
  Existing Partnerships
II. Planning Process
  Description of Planning Process
  Planning Issues
III. Summary Refuge and Resource Descriptions
  Geographic/Ecosystem Setting
  Refuge Resources, Cultural Resources, and Public Uses
  Special Management Areas
IV. Management Direction
  Refuge Management Direction: Goals, Objectives, and Strategies
  Refuge Management Policies and Guidelines
V. Implementation and Monitoring
  Funding and Personnel
  Step-Down Management Plans
  Partnership Opportunities
  Monitoring and Evaluation
  Plan Amendment and Revision
Appendices
  Glossary
  Bibliography
  RONS List
  MMS list
  Compatibility Determinations
  Habitat/Land Protection Plan(s)
  Compliance Requirements
  NEPA Documentation
  Summary of Public Involvement/ Comments and Consultation/ Coordination
  Mailing List
  List of Preparers
  Others, as appropriate

Exhibit 3–5.—EA or EIS Incorporating Elements of a CCP Recommended Outline

Cover Sheet
Acknowledgments
Table of Contents
Summary
1. Introduction, Purpose of and Need for Action
  Purpose of and Need for Plan
  NWRS Mission, Goals, and Guiding Principles
  History of Refuge Establishment, Acquisition, and Management
  Legal and Policy Guidance
  Refuge Purpose(s)
  Refuge Vision Statement
  Refuge Management Direction: Goals
  Refuge Management Policies and Guidelines
  Step-Down Management Plans
  Description of Planning Process
  Planning Issues
  Plan Amendment and Revision
II. Alternatives, Including the Service's Proposed Action
  Description of Each Alternative (also include maps depicting strategies for each alternative)
  Refuge Management Direction: Objectives and Strategies
    Funding and Personnel
    Partnership Opportunities
    Monitoring and Evaluation
  Alternatives Considered, but Eliminated from Detailed Study
  Summary Comparison of Alternatives
III. Affected Environment
  Geographic/Ecosystem Setting
  Refuge Resources, Cultural Resources, and Public Uses
IV. Environmental Consequences
  Environmental Effects of Each Alternative (also include a matrix comparing issues, impacts, and benefits for each alternative)
V. List of Preparers
VI. Consultation and Coordination with Others
  Summary of Public Involvement/ Comments
  Mailing List
Appendices
  Glossary
  Bibliography
  RONS List
  MMS List
  Compatibility Determinations
  Habitat/Land Protection Plan(s)
  Compliance Requirements
  Others, as appropriate

Refuge Management—Part 602 National Wildlife Refuge System Planning

Chapter 4 Step-Down Management Planning—602 FW 4

4.1 What is the purpose of this chapter? This chapter provides guidance on step-down management planning.

4.2 What is our policy for step-down management planning? The U.S. Fish and Wildlife Service (Service or we) will prepare step-down management plans when required by policy or when they may be necessary to provide strategies and implementation schedules for meeting goals and objectives identified in Comprehensive Conservation Plans (CCPs). Step-down management plans should include public involvement and National

Environmental Policy Act (NEPA) compliance documentation, as appropriate. Develop step-down management plans following the planning process guidance in 602 FW 1 and 602 FW 3.

4.3 What is the applicability of step-down management planning and its relationship to Comprehensive Conservation Plans?

A. Step-down management planning is the formulation of detailed plans for meeting goals and objectives identified in the CCP.

B. Step-down management plans describe the specific strategies and implementation schedules we are to follow, "stepping down" from general goals and objectives. The preparation of new step-down management plans or substantial changes to existing step-down management plans typically will require further compliance with NEPA and other policies, and an opportunity for public review. For public use plans or other step-down management plans dealing with proposed uses of the refuge, prepare and append compatibility determinations to the plans.

C. The CCP will identify which step-down management plans are necessary and provide a schedule for their completion. After completion of the CCP, modify existing step-down management plans as needed to accomplish stated objectives. See 602 FW 3. In the absence of an approved CCP, we will develop step-down management plans to describe goals, objectives, strategies, implementation schedules, and details necessary to implement a management program.

D. As an alternative to separate step-down management plans, we may address management programs in detail during preparation of the CCP. Determining which programs we can address in detail in the CCP depends on several factors, including the degree of public interest, the amount of available information, and the complexity of the issues.

4.4 How do we combine step-down management plans? Address management subjects individually or combined into a single, integrated step-down management plan. This decision rests with the Refuge Manager. Base the decision on strategies defined in the CCP, the relationship between program areas, and the complexity of the programs under consideration. Some program areas, such as fire management and habitat management, logically suggest an integrated approach.

4.5 What is the list of potential step-down management plans? Following is the current list of potential refuge step-down management plans. Consider all of these plans during the CCP process. The CCP will document which plans we require for the planning unit.

Step-down management plans	Service manual reference
Occupational Safety and Health.	(Parts 240–249)
Safety Program	(240 FW 1–9)
Safety Operations	(241 FW 1–9)
Industrial Hygiene	(242 FW 1–13)
Hazardous Materials Operations.	(242 FW 6)
Water Rights	(Part 403)
Policy, Objectives, and Responsibilities.	(403 FW 1)
Law Enforcement	(Parts 440–459)
Pollution Control	(Parts 560–569)
Policy and Responsibilities.	(560 FW 1)
Pollution Prevention	(560 FW 2)
Compliance Requirements.	(Part 561)
Clean Water Act	(561 FW 3)
RCRA—Hazardous Waste.	(561 FW 6)
Pesticide Use and Disposal.	(Part 562)
Pest Management	(562 FW 1)
External Threats to FWS Facilities.	(Part 563)
Air Quality Protection	(563 FW 2)
National Wildlife Refuge System (NWRS) Uses.	(Part 603)
NWRS Uses (Appropriate Refuge Uses).	(603 FW 1)
Priority Wildlife-Dependent Recreation.	(Part 605)
Hunting	(605 FW 2)
Fishing	(605 FW 3)
Wildlife Observation	(605 FW 4)
Wildlife Photography	(605 FW 5)
Environmental Education.	(605 FW 6)
Interpretation	(605 FW 7)
Wilderness Management.	(Part 610)
Special Area Management.	(Part 611)
Research Natural Areas.	(611 FW 1)
Public Use Natural Areas.	(611 FW 2)
Wild and Scenic Rivers.	(611 FW 3)
National Trails	(611 FW 4)
Man in the Biosphere Reserve	
Western Hemisphere Shorebird Reserves	
Ramsar Convention on Wetlands	
Minerals Management	(Part 612)
Minerals and Mining	(612 FW 1)
Oil and Gas	(612 FW 2)
Cultural Resources Management.	(Part 614)
Habitat Management Planning.	(Part 620)
Fire Management	(Part 621)
Population Management.	(Part 701)
Inventory and Monitoring.	(701 FW 2)
Propagation and Stocking.	(701 FW 3)
Marking and Banding	(701 FW 4)
Disease Prevention and Control.	(701 FW 7)
Trapping	(701 FW 11)
Fishery Resources Management.	(Part 710)
Exotic Species	(Part 751)

Dated: May 16, 2000.

Jamie Rappaport Clark,

Director.

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Federal Register

Thursday,
May 25, 2000

Part III

Department of Transportation

Federal Highway Administration
Federal Transit Administration

23 CFR Parts 450 and 1410

49 CFR Parts 613 and 621

Statewide Transportation Planning; Metropolitan Transportation Planning; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 450 and 1410

Federal Transit Administration

23 CFR Part 1410

49 CFR Parts 613 and 621

[FHWA Docket No. FHWA–99–5933]

FHWA RIN 2125–AE62; FTA RIN 2132–AA66

Statewide Transportation Planning; Metropolitan Transportation Planning

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA and the FTA are jointly issuing this document which proposes revisions to the regulations governing the development of transportation plans and programs for urbanized (metropolitan) areas and statewide transportation plans and programs. These revisions are a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) enacted on June 9, 1998, and generally would revise existing regulatory language to make it consistent with current statutory requirements. In addition, the proposed regulatory language addresses the implementation of Presidential Executive Order 12898 regarding Environmental Justice. These changes are being proposed in concert with revisions to regulations regarding environmental impact and related procedures which are published separately in today's **Federal Register**. The two rules are linked in terms of their working relationship and the FHWA and the FTA are soliciting comments on each rule individually, as well as their intended functional and operational interrelationships.

DATES: Comments must be received on or before August 23, 2000. For dates of public information meetings see "Supplementary Information."

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see "Supplementary Information."

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Sheldon M. Edner, Metropolitan Planning and Policies Team (HEPM), (202) 366–4066 (metropolitan planning), Mr. Dee Spann, Statewide Planning Team (HEPS), (202) 366–4086 (statewide planning), or Mr. Reid Alsop, Office of the Chief Counsel (HCC–31), (202) 366–1371. For the FTA: Mr. Charles Goodman, Metropolitan Planning Division (TPL–12) (metropolitan planning), (202) 366–1944, Mr. Paul Verchinski, Statewide Planning Division (TPL–11)(statewide planning), (202) 366–6385, or Mr. Scott Biehl, Office of the Chief Counsel (TCC–30), (202) 366–0952. Both agencies are located at 400 Seventh Street, SW., Washington, DC 20590. Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., and for the FTA are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded 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's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Public Information Meetings

We will hold a series of seven public briefings within the comment period for the NPRM. The purpose of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the environmental (National Environmental Policy Act of 1969 (NEPA)) process, and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Further information and any changes in addresses, dates and other logistical information will be made available after the publication of this NPRM through the FHWA and the FTA websites, and through other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information, but without access to these sources, may contact the individuals listed in the above caption **FOR FURTHER INFORMATION CONTACT**.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30 , 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1–4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at *kpm@unity.ncsu.edu*. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, 83 Stat. 852, implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is

generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Background

Sections 1203, 1204, and 1308 of the TEA–21, Public Law 105–178, 112 Stat. 107, amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive, and coordinated transportation planning process in metropolitan areas and States. Similar changes were made by sections 3004, 3005, and 3006 of the TEA–21 to 49 U.S.C. 5303–5306 which address the metropolitan planning process in the context of the FTA's responsibilities. We are proposing revisions to our current metropolitan and statewide planning regulations and are inviting comments on the proposed revisions.

General Information Concerning Development of Regulation

Approach to Structure of Proposed Regulation

Revisions to the current regulation at 23 CFR part 450 are being proposed to reflect the impacts of the TEA–21. We have adopted an approach to the proposed revisions that will rely heavily on guidance and good practice. The proposed regulatory language attempts to respond to legislative mandates and changes with minimal amplification where feasible. In some cases, other factors, *e.g.*, court cases, presidential directives, etc., have provided a stimulus for change and amplification. In these instances, the agencies have tried to keep regulatory language to a minimum except where clarification would assist appropriate agencies and groups in complying.

In a separate document in today's **Federal Register**, we propose to remove 23 CFR part 771 and add parts 1420 and 1430 in its stead. This regulation implements the FTA and the FHWA processes for complying with the Council on Environmental Quality's (CEQ) regulations for implementing the NEPA, Public Law 91–190, 83 Stat. 852. Jointly administered by the FTA and the FHWA, part 771 was last revised in 1987. The passage of the TEA–21 and its predecessor, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, have contributed legislative impetus to a revision. To facilitate compliance with section 1308 of the TEA–21 dealing with major investment studies and section 1309 addressing environmental streamlining and twelve years of court rulings and experience, we propose to revise the regulations regarding environmental impact and related procedures in conjunction with those for metropolitan and statewide transportation planning. In general, the intent is to more effectively link the two regulations to facilitate integration of decisions, reduce paperwork and analytical activity where feasible, and to refine procedures and processes to achieve greater efficiency of decision making. In addition, we believe that an integrated approach to planning and project development (NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

In preparing this proposed rule, we have attempted to maintain or reduce the level of data collection and analyses that is currently required. We solicit comment on the extent to which this strategy has been achieved. Comments suggesting that the strategy has not been successful should identify specific requirements and/or provisions that increase burdens and provide specific reasons for this increase. The degree or extent of the increase should be identified also. Suggestions to lessen burdens are welcome.

In the proposed rule, we revised the section headings to utilize more commonplace language and for clarity. The substance of the sections is modified in some cases as described below. The organization of each section and overall flow of organization remains predominantly unchanged, except as indicated in the section-by-section discussion.

In addition, we are proposing a new numbering scheme. Current part 450 would be redesignated as part 1410.

Input to Development of Proposed Regulation

As noted above, the TEA–21 was signed into law on June 9, 1998. Subsequently, the DOT initiated a series of national meetings to solicit input regarding possible approaches to implementing the new legislation. The results of the principal public sessions in this outreach effort are summarized in "Listening to America: TEA–21 Outreach Summary, 1998." This document was published by the Office of the Secretary, U.S. Department of Transportation. It is currently available online through the following website: *www.fhwa.dot.gov/tea21/listamer.htm*. Additionally, on February 10, 1999, we issued a discussion paper (Federal Highway Administration and Federal Transit Administration, TEA–21 Planning and Environmental Provisions: Options for Discussion) to further solicit public comments regarding previously provided suggestions. This discussion paper was designed to reflect comments from stakeholder groups and encourage all interested parties to provide additional detailed comments on approaches to implementing the statutory provisions for the planning and environmental sections of the law. The Options Paper is available online at *www.fhwa.dot.gov/environment/tea21imp.htm*.

Overall Strategy for Regulatory Development

Our strategy for regulatory development has three principal elements: (1) Outreach and listening to stakeholders, (2) developing improvements that will allow the FHWA, the FTA, the States and metropolitan areas to demonstrate measurable progress toward achieving congressional objectives, and (3) looking internally, with our Federal partner agencies, at how we collectively can improve coordination and performance.

As indicated above, the FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the DOT, developed and implemented an extensive public outreach process on all elements of the TEA–21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The DOT heard from over 3,000 people, including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape our implementation strategy, guidance and regulations. Those comments will be placed in this docket as informational background.

With respect to the planning and environmental provisions of the TEA–21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing an Options Paper for discussion on the Planning and Environmental Streamlining Provisions of the TEA–21. The contents of the Options Paper

reflected input received up to that time and built upon the existing statewide and metropolitan planning regulations and our implementing regulation for the NEPA. We released the Options Paper on February 10, 1999, and received comments through April 30, 1999.

More than 150 different sets of comments were received from State Departments of Transportation (State DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this notice of proposed rulemaking.

Another element of outreach included meetings between the FHWA and the FTA and key stakeholder groups, other Federal agencies, and the regional and field staff within the FHWA and the FTA. These sessions also helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation on statewide and metropolitan planning under the TEA–21.

The Options Paper comments are contained in the docket and are summarized below. This general summary is structured around the issues as presented in the Options Paper and seeks to provide an overall perspective on the range of opinions submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

These proposed rules were developed by an interagency task force of planners and environmental specialists of the FHWA and the FTA, with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The task force reviewed all input received from the outreach process and through other sources which communicate regularly with the DOT. In addition, comments were solicited from the field staff of the FHWA and the FTA.

Summary of Comments Received on Options Paper

The following discussion summarizes the comments received on the Options Paper and the response we are generally taking in structuring this proposed rule. This summary focuses only on the comments directly related to planning. The comments regarding environmental provisions, generally, are treated in the preamble to the proposed revision to 23 CFR 771. Cross-cutting issues as discussed in the Options Paper appear in both preambles, as appropriate. Since many commenters included both planning and environmental topics in their correspondence, an exact count of planning versus environment issues in the 150 comments received is not easy or useful. The summary is not intended to be complete or comprehensive. Rather, it is provided to give the public a general sense of the issues addressed in the comments received. The views of individual commenters can be obtained by consulting the docket as indicated above.

Planning Factors

We were offered a number of options on how to ensure that the seven new planning factors added by the TEA–21 are addressed in the metropolitan and statewide planning processes. One option is to include the TEA–21 statutory language in the planning regulation and provide maximum flexibility to States and MPOs to tailor approaches to local conditions. In addition, it was suggested that we amplify the basic statutory language in this regulation by providing information to States and MPOs, including best practices on approaches to considering the factors, and technical assistance on planning practices which integrate consideration of the seven factors. A third possibility was to develop specific criteria for the consideration of each of the seven factors, include the criteria in this regulation, and require that State DOTs and MPOs demonstrate compliance through the planning certification process.

The vast majority of comments received on the planning factors, including those from the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the Association of Metropolitan Planning Organizations (AMPO), and the American Association of State Highway and Transportation Officials (AASHTO), supported a twofold approach: (1) To include the TEA–21 statutory language in the planning regulation without further regulatory requirements, and (2) to provide technical assistance and information on current practices to States and MPOs to aid them in consideration of the planning factors. An additional point raised, by State DOTs and MPOs in particular, was that guidance, if issued by the FHWA and the FTA, should not be construed as constituting new, binding requirements on State DOTs and MPOs.

Systems Operation and Management and Integration of Intelligent Transportation Systems Into the Planning Process

The TEA–21 directs that operation and management of the transportation system requires greater attention during planning. Capital investment, especially for new capacity but also for system preservation, has dominated traditional transportation planning analyses and decisions. Continuing fiscal constraint, growing sensitivity to environmental impacts of infrastructure and the need for prudent management of infrastructure all lead to a heightened consideration of systems management and operational strategies as part of systems planning. The emergence of various Intelligent Transportation System (ITS) technologies as useful tools in the operation and management of the transportation system has also highlighted the need to focus increased attention in this area. An additional factor in treating ITS as part of system operation and management are the requirements of section 5206(e) of the TEA–21 regarding the consistency of federally funded ITS projects (funded with highway trust fund dollars) with the National ITS Architecture.

Many individual State DOTs, MPOs, and their national associations (AMPO and AASHTO) expressed the view that the planning factor requiring consideration of strategies to promote efficient system management and operation is sufficient to direct States and MPOs to consider operations and management issues as an integral part of their planning efforts. They indicated that the seven factors are all important and that to highlight consideration of any one factor above all others is inappropriate. Further, they felt that treating operations and management issues with any additional emphasis would be duplicative and is not necessary.

Only one commenter, the Maricopa Association of Governments, explicitly addressed the ITS matter. This agency suggested that we implement a requirement for federally funded ITS projects to be in accord with a regional ITS plan that is developed through a cooperative process.

Cooperative Development of Revenue Forecasts

The TEA–21 retained the basic requirement for financially constrained metropolitan plans and statewide and metropolitan transportation improvement programs (STIPs/TIPs).

The TEA–21 clarifies the requirement for cooperative development by States, MPOs, and transit agencies of estimated future levels of funding from local, State, or Federal sources that may reasonably be expected to be available to metropolitan areas.

In general, many State DOTs and the AASHTO seek the greatest flexibility while MPOs and local governments seek provisions which would ensure that they get a "fair share" of Federal funding. The NACE, the AMPO, the National Association of Counties (NACO), and the Surface Transportation Policy Project (STPP) observe that a formal process should be required based upon consensus of the State, MPO, and transit agencies (where applicable) and that the process should be documented and implemented with an adequate phase-in period provided. The national associations and many of their constituent members commented that the process which has evolved over the past several years is inadequate for MPO and local agency needs, and that the Congress intended that this be rectified through the TEA–21 clarifying language. Both the NACE and the AMPO support the development of formal procedures, including decision rules for allocating funds and the development of internal and external dispute resolution and appeals processes to ensure that revenue forecasting is a truly collaborative process. The NACE also suggests that the FHWA and the FTA serve as "honest brokers" between State transportation agencies and MPOs when there is disagreement on revenue forecasts and allocation.

Illustrative Projects

Organizations and agencies, including the Indian Nation Council of Governments, the Public Policy Institute of California, the AMPO, and the EPA raised concerns about the need for coordination between States and MPOs in cases where illustrative projects are proposed to be added to metropolitan area plans or TIPs. Specifically, it was suggested that in metropolitan areas, MPOs should have explicit approval authority for the inclusion of such projects in transportation plans and TIPs and for the implementation of illustrative projects.

On the whole, respondents supported a position that illustrative projects are important to them, but that such projects should not be included in the transportation plan or TIP conformity analysis until formally amended into the Plan/TIP. In addition, there was considerable support for an approach which requires MPO concurrence on projects that are proposed to be advanced to an MPO plan and/or TIP. The Texas Natural Resources Conservation Commission and the Colorado DOT expressed concern that illustrative projects would be allowed to circumvent the planning process. State DOTs, in particular, advocated allowing illustrative projects to be included in the conformity analyses for plans and TIPs in order that it may be demonstrated that they will not jeopardize the conformity of plans and TIPs.

The AASHTO and several State DOTs felt that we are being too restrictive in our definition of a financially constrained plan. In short, these commenters request more flexibility. Some State DOTs, including the Texas, New Jersey, Missouri, and Virginia DOTs point out that they feel it entirely appropriate to conduct NEPA related project development activities and studies on such projects, outside of the fiscal constraint requirements. They endorse amending such projects into the plan and TIP when appropriate, and at that time trigger fiscal constraint and conformity requirements.

Annual Listing of Projects

During the outreach process, the Missouri DOT, and the Denver Regional Council of Governments (DRCOG) remarked that MPOs do not have the authority to obligate Federal funds and that States and transit agencies are the authorized recipients of Federal funds. Therefore, they suggest, the States, transit agencies, and/or the Federal government need to provide the necessary information to the MPOs in order that they may comply with the TEA–21 requirement for an annual listing of projects.

The AMPO recommended that we establish and maintain a project monitoring system for the purpose of tracking Federal highway and transit obligations and that we make this system accessible to the MPOs in order that it might provide the basis for the annual listing of projects. These stakeholders are concerned that there be clear direction to the implementing agencies (States and transit agencies) for meeting this TEA–21 requirement. Further, they are concerned that MPOs, without the assistance of implementing agencies, do not have the necessary information to comply with this requirement. The American Road and Transportation Builders Association (ARTBA) felt the annual list should include all obligated funds, rather than just projects with Federal funding.

The U.S. EPA believes a nationally uniform format for these lists should be developed and that such lists should be sent to State and Federal environmental agencies, the interagency consultation groups under the transportation conformity regulation, and others.

The Transportation Equity Network and the Center for Community Change advocate the preparation of this list on a zip-code basis and cited a U.S. Department of Housing and Urban Development (HUD) model. They suggest a zip-code based list is easily understandable by members of the public.

Many of those who commented supported an approach which would provide easy public access to information, through a wide means of communication, as noted above. Many stakeholders, including the AMPO and the Kentucky Transportation Cabinet, opposed a process which would require the development of such a list through the public involvement process of the MPO. However, the American Planning Association, the Surface Transportation Policy Project, the Urban Habitat Program, the Tri-State Transportation Campaign, and the National Association to Defend NEPA, among others, supported the dissemination of the list, once developed, through easily accessed public distribution channels.

Coordination With Local Elected Officials in Non-Metropolitan Areas

The NACO, the National Association of Development Organizations, the STPP, the York County Planning Commission (Pennsylvania), the Minnesota DOT, and the Georgia DOT all suggested that where regional planning organizations or councils of government exist, they be considered as an entity that States could work with to facilitate the engagement of elected officials. The NACE, U.S. House of Representative Bob Ney and others supported a two-phased approach: the FHWA and the FTA would provide the flexibility to States and local elected officials to develop a process, and then be provided ample time to document and formalize the process pursuant to the TEA–21. These commenters felt that the flexibility to tailor approaches is needed, but that documentation of the agreed upon approach is also needed to ensure it is implemented on a continuing basis.

The National Association of Towns and Townships suggested more formal processes, like those that are in place in some States, where local governments form development districts or regional development commissions, modeled to some extent after the MPO process. The Land-of-the-Sky Regional Council indicated that this approach is necessary to ensure rural officials have

a voice in decision making and that rural area needs are addressed. In addition, they suggest that such an approach ensures the coordination of a broad array of objectives relating to economic development, land use, and transportation. State DOTs in Idaho, Montana, North Dakota, South Dakota, Wyoming, New York, Virginia and Oklahoma suggested that existing local official consultation arrangements are adequate and that compliance with the TEA–21 provision merely requires documentation of existing arrangements.

20-Year Forecast Period in Transportation Plans

Commenters, including AASHTO, ITE, Virginia DOT, Texas DOT, Washington DOT, and Kansas DOT supported a clarification which reiterates that transportation plans must be for a 20-year minimum forecast period at the time of plan adoption. Further, the Capital District Transportation Authority, the Regional Transit Agency in Denver, the Central Puget Sound Regional Transit Agency, the Texas Natural Resources Conservation Commission, the Lackawanna County Regional Planning Commission and others felt that so long as metropolitan TIP updates and amendments (required every two years) are consistent with the metropolitan plan, then, a metropolitan plan update with a new 20-year forecast period should not be required. The STIP amendments and updates (also required every two years) would be governed by the State plan and its unique update schedule.

Transportation Conformity Related Issues

There are several issues related to the EPA conformity regulation in 40 CFR parts 51 and 93 that could be addressed in the revised planning regulations. These issues relate to clarifying requirements and definitions, and could lead to better integration of transportation and air quality planning, a principal objective of the EPA's regulation. These include:

1. Consistency between metropolitan plan update cycle and the point at which a conformity determination is required.

During the outreach process, and in many of the comments to the Options Paper, stakeholders indicated that they interpret the three-year clock for a plan (and required conformity analysis) as starting from the date the MPO approves the metropolitan plan. Agencies, including the Utah DOT, the New York DOT, and others commented that this provides certainty about the exact time frame in which the plan needs to be updated and that this is the preferred approach to clarifying this issue.

In nonattainment and maintenance areas, however, this approach is complicated by required MPO and Federal conformity findings. The AASHTO, and the Virginia DOT supported making the effective date of the plan the date of the Federal conformity finding. The AMPO indicated that it has no certainty as to when the FHWA and the FTA will approve a conformity determination on a metropolitan plan and thus, tying the effective date of the plan to an approval over which they feel they have no control does not, in its view, facilitate the planning process.

2. Transportation Control Measures (TCMs) in State Implementation Plans (SIPs).

Stakeholders, including the Bicycle Federation of America, the AASHTO, and the AMPO, observed that TCMs, for which Federal funding or approvals are required, must meet the TEA–21 planning requirements (i.e., come from a conforming and financially constrained transportation plan and TIP) and that attempting to circumvent this process, in order to place these measures in SIPs, undermines the transportation planning process.

3. Definitions: TIP Amendments, Conformity Lapse, TIP Extensions.

The FHWA and the FTA have considered clarifying ambiguous terms used in the ISTEA and the EPA's conformity regulation 40 CFR parts 51 and 93. The New Jersey DOT, the AMPO, the Utah DOT, the Texas Natural Resources Conservation Commission, the Wisconsin DOT, and the DRCOG have endorsed the concept of clarification of definitions and terms and want an opportunity to comment on proposed definitions.

Cross Cutting Issues

There are a number of options for implementing the cross-cutting planning and environmental provisions of the TEA–21. Both regulatory and non-regulatory approaches were suggested to us. The concepts discussed in the proposed rule have been coordinated with other administrations within the DOT and with other Federal agencies.

A. Public Involvement

Some State and local agencies have expressed interest in ways to integrate the public involvement process related to plan and TIP development with public involvement process related to the project development. Several stakeholder groups have noted the difficulties in getting public input on long-range plans and TIPs and the tendency for the public to be more inclined to participate in project-specific opportunities for input. They indicated that this tends to frustrate the public involvement efforts of State and MPO planners to obtain input on long-range transportation plans. During the public outreach process, we sought input in this area, as well as examples of successful techniques and approaches to engage the public on both project-level proposals and long-range plans and TIPs.

Comments from stakeholders were varied. However, there were a substantial number of comments that preferred the following two-fold approach: retaining the public involvement approach included in the planning regulation and modifying the NEPA regulation public involvement requirements to make our procedures the same (based on the FHWA, rather than the FTA, approach). This, they suggest, would allow States and MPOs to design processes that work best given local conditions and needs, yet would simplify the NEPA public involvement process by consolidating the FHWA and the FTA processes into one.

In arguments supporting this option, a considerable number of commenters, including State DOTs in Montana, Washington, New Jersey, Idaho, Wyoming, North Dakota, South Dakota, and the AASHTO, pointed out distinctions between the type of public involvement that must occur in the planning process and that which is sought in the NEPA process. They point out that these two processes, tailored according to each need, can serve two different purposes and can work without conflict.

There were a number of comments on whether freight interests and representatives of transit users should be represented with voting membership on MPO boards. These commenters, including the NACE, all opposed this idea and observed that putting persons representing particular interests on voting boards with elected officials would dilute the representation of duly elected officials. Yet, the Bicycle Federation of America supported putting representatives of bicyclists and pedestrians on voting boards of MPOs to ensure that they have an opportunity to comment on transportation plans and programs. The Texas Natural Resources Conservation Commission, the Orange County Transportation Authority, the Arkansas DOT, and the Minnesota DOT supported a consistent approach to public involvement for both planning activities and the NEPA project

development activities and suggested basing this approach on the current FHWA NEPA regulation (23 CFR part 771). The EPA suggested that the DOT needs to assist community leaders, MPOs, and the public in establishing performance goals and local accountability for public participation.

B. Environmental Justice and Equity

There were a considerable number of commenters, including the AASHTO and many State DOTs, that opposed any suggestion that equity in the distribution of resources should be a factor used to assess whether environmental justice issues are being adequately addressed. These comments ranged from claims that such language, if included in regulation, would contradict the hard-fought TEA–21 provisions on the allocation of transportation funds to claims that such language would result in preempting States and MPOs from selecting the transportation projects and programs in their respective jurisdictions. Deep concern about this option and opposition to this approach was widespread and shared by MPOs and transit agencies who feel that geographic sub-allocation of funding based on demographics is short-sighted, and an inappropriate way to ensure the principles of environmental justice are honored.

Many commenters indicated that they believe the Executive Order 12898, Title VI of the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 241, as amended, and current NEPA requirements are sufficient to ensure that environmental justice concerns are addressed. The New Jersey DOT noted that benefits that accrue to users of investments should be a consideration in planning, and that this could possibly be measured in terms of mobility.

The Fulton County and Georgia Department of Environment and Community Development focused on the composition of appointed officials on regional authorities. This agency suggested that such authorities or decision making bodies should reflect the demographics of the region. This agency also suggested that all elements of the population affected by a particular decision should be sought out for their input. In addition, this commenter suggested that controversial project decisions should be analyzed to ensure that they conform to the Environmental Justice Presidential Executive Order. Finally, the commenter suggested that all decisions should be analyzed to ensure that no particular geographic sub-area is being over-burdened with adverse conditions resulting from transportation investments.

The U.S. Forest Service pointed out that lumping environmental justice and equity together is, in its view, a mistake. It suggested that the best option for public involvement, especially on issues concerning environmental justice, would be those procedures that incorporate collaboration processes early and often in the process.

One agency made the case that we should consider requiring environmental justice analyses of plans, programs and processes, and of major projects. The commenting agency suggested that we could adopt a set of requirements for recipients of our funding. Requirements would include: (1) Community group or nonprofit organization inclusion as equal and full partners in proposed projects; (2) applications for funding include community input in project development; and (3) external reviewers would make project selection decisions.

C. Elimination of Major Investment Study as Separate Requirement

Section 1308 of the TEA–21 eliminates the major investment study (MIS), described in 23 CFR 450.318, as a separate requirement and calls for integration of the MIS, as appropriate, into the planning and NEPA analyses required under 23 CFR parts 450 and 771. Proponents supporting this legislative action cited instances where major investment studies were said to duplicate NEPA requirements, were time consuming and costly, and importantly, that results were not usefully integrated into the project development activities under NEPA.

The Options Paper articulated four general concepts (distilled from earlier stakeholder comments) focusing on strengthening the linkage between systems planning and project development. We thought this would facilitate broader consideration of transportation system development although, in some cases, commenters had other views as discussed below.

In all of the options, the intent was to faithfully implement the TEA–21 provision that exempts plans and programs from consideration under NEPA. The MPOs would not be required to conduct NEPA analyses on plans. However, they could more effectively utilize the analyses conducted during planning activities to facilitate compliance with NEPA requirements at a project level. If an MPO, as part of its planning process, chose to conduct a NEPA analysis on a plan, it would be a permissible, voluntary decision. In addition to the four options presented for input, the Options Paper included a number of questions to solicit a better understanding of stakeholders' needs and concerns.

There were a wide range of comments on the elimination of the MIS and on the options presented. The AASHTO felt that we should restrict regulatory language and allow States and MPOs to integrate the principles of the MIS, as appropriate, into planning and programming activities at their discretion. The AMPO suggested that we should allow States the flexibility to do the NEPA analysis in the planning process, as an option, but not as a requirement. In fact, many stakeholders were firmly opposed to any regulatory language integrating NEPA requirements into the planning process.

Most of the commenters supported better linkages between planning and project development and many commenters, including the Minnesota DOT, supported the development of purpose and need during planning studies and sub-regional analysis, but only with the proviso that resource agencies and others allow the use of this information in the NEPA process. On the other hand, the Virginia DOT, for example, was opposed to developing project purpose and need during planning if there is a lack of participation of resource agencies and other parties to the NEPA process who could then require that analysis be redone or revisited during the formal NEPA process. There was near unanimous support for streamlining through reducing duplicative requirements and practices, such as, revisiting issues during project development that were, in commenters views, fully explored during planning.

Many commenters supported options that offer the most flexibility to States and MPOs. The Florida DOT suggested blending the two most flexible options and developing regulatory language that ensures the principles of MIS not already addressed by other Federal regulations and statutes are included in the metropolitan planning and programming requirements. They also suggested that the planning regulation should include requirements for proactive agency coordination and public involvement, collaborative and multi-modal planning analysis of alternatives, and financial capacity analysis of alternatives. The Florida DOT also felt that the States should take the lead on these processes.

The City of Irvine, Texas, suggested that the MIS process served as a good check on the system planning process and was a good way to build consensus and gain public input. Its traffic and

transportation director suggested that expanding the purpose and need statement would help narrow down alternatives prior to the NEPA process. The same individual also suggested looking at the entire process to identify what environmental information could be both practical and useful at each level of analysis.

Additionally, and echoing earlier comments, stakeholders felt that the key to success in whatever approach is taken or required in regulation, is that Federal agencies participate early in the process and that they stay involved throughout the development of, and elimination of, alternatives. Consistent with this suggestion, the EPA commented that the only way they would give standing to previously conducted planning analyses during the NEPA project development stage is if there had been full opportunity for consultation in the metropolitan planning process, and if the resource agencies had "confidence that those plans were developed with environmentally desirable alternatives being considered."

D. Cumulative and Secondary Impacts

The Options Paper presented two scenarios which would help promote the consideration and evaluation of the cumulative and indirect effects of projects at a regional or large sub-regional scale, rather than on a project-by-project basis. In metropolitan areas, the former MIS requirement provided an opportunity for appropriate consideration of such effects across a sub-regional area where major, multiple transportation actions might be needed. With the elimination of the separate MIS requirement, the most logical venue for the consideration of such effects may be in the systems planning processes that support the development of metropolitan or statewide transportation plans.

One approach to implementing cumulative and secondary impact consideration would require an appropriate evaluation of these effects in a regional or sub-regional analysis, thus obviating the need for repetitious, project-by-project review. Such an approach might also provide an opportunity for more effective and efficient mitigation of cumulative impacts and the enhancement of adversely affected resources. Another possibility is to rely on a systems planning analysis of cumulative and indirect effects. In the absence of a robust planning-level review of these impacts, the project-by-project review as part of each NEPA evaluation would be required.

Some commenters, including the AASHTO and the Bicycle Federation of America, interpreted the first option as a requirement for enhancement projects whenever there are cumulative or indirect effects identified. A large number of commenters opposed this approach, but for two different reasons. The Bicycle Federation of America felt that using transportation enhancement funding to counterbalance the adverse impacts of projects is unacceptable and that such mitigation should be part of the project cost and implementation from the outset. Others, including State DOTs in Utah, New York, and Virginia, believed that a regional or subregional analysis is unrealistic, excessively costly, and of no value unless the study results were accepted by State and Federal environment and resource agencies.

The Oregon DOT observed that the appropriate level to consider cumulative and indirect impacts is at a regional or sub-regional planning level, but not as an analysis *per se;* rather, as a plan to preserve and enhance habitat and preserve resources for future generations. A few examples of plans that accomplish this objective were provided. The New Jersey DOT, Texas DOT, and the American Road and Transportation Builders Association stated that the "science" for evaluating the impacts is not available and that we should provide funding, education, and tools to assist MPOs and States to develop the appropriate analysis tools.

Finally, the Lubbock and Byron College Station MPOs (both from Texas) indicated that cumulative and indirect impacts are, and should be, adequately addressed in consideration of the planning factors and that additional regulatory requirements are unnecessary and redundant.

Distribution Table

For ease of reference, a distribution table is provided for the current sections and the proposed sections as follows:

Old section	New section
450.100.	1410.100.
450.102.	1410.102.
450.104.	1410.104.
Definitions	Definitions.
None	Conformity lapse.
None	Conformity rule.
Management System	Congestion management system [Revised].
Consultation	Consultation [Revised].
Cooperation	Cooperation [Revised].
Coordination	Coordination [Revised].
None	Design concept.
None	Design scope.
None	Federally funded non-emergency transportation services.
None	Financial estimate.
None	Freight shipper.
None	Illustrative project.
None	Indian tribal government.
None	Interim Plan.
None	Interim Transportation Improvement Program.
None	ITS integration strategy.
Maintenance area	Maintenance area [Revised].
None	Management and operation.
Metropolitan planning area	Metropolitan planning area.
Metropolitan planning organization	Metropolitan planning organization.
Metropolitan transportation plan	Metropolitan transportation plan.
Nonattainment area	Nonattainment area.
None	Non-metropolitan local official.
None	Plan update.

Old section	New section
None	Provider of freight transportation services.
None	Purpose and need.
Regionally significant project	Regionally significant project [Revised].
State	State.
State implementation plan	State implementation plan.
Statewide transportation improvement program (STIP)	Statewide transportation improvement program (STIP).
None	Statewide transportation improvement program (STIP) extension.
Statewide transportation plan	Statewide transportation plan.
None	TIP update.
None	Transportation control measures.
Transportation improvement program	Transportation improvement program [Revised].
Transportation management area	Transportation management area.
Transportation plan update	Transportation plan update.
None	Twenty year planning horizon.
None	Urbanized area.
None	User of public transit.
450.200	1410.200.
450.202	1410.202.
450.204	1410.204.
450.206(a)(1)	Removed.
450.206(a)(2) through (a)(5)	1410.206(a)(1) through (a)(4).
None	1410.206(a)(5)[Added].
450.206(b)	Removed
450.208(a)	1410.208(a) [Revised].
450.208(b)	1410.208(b) [Revised].
450.210(a)	1410.210(a) [Revised].
450.210(b)	1410.210(e) [Revised].
450.212(a) through (f)	1410.212(b) [Revised].
None	1410.212(c) [Added].
450.212(g)	1410.212(e).
450.214	1410.214 [Revised].
450.216(a) introductory paragraph	1410.216(a).
450.216(a)(1) through (a)(7)	1410.216(c)(1) through (c)(7).
None	1410.216(c)(8).
450.216(a)(8)	1410.216(c)(9).
450.216(a)(9)	1410.216(c)(10).
None	1410.216(b) [Added].
450.216(b)	1410.216(d).
450.216(c)	1410.216(e) [Revised].
None	1410.216(f) [Added].
450.216(d)	1410.216(g) [Revised].
None	1410.218 [Added].
450.218	1410.220 [Revised].
450.220(a) introductory paragraph	1410.222(a) introductory paragraph.
450.220(a)(1)	1410.222(a)(1) [Revised].
450.220(a)(2)	1410.222(a)(2) [Revised].
None	1410.222(a)(3) through (a)(6) [Added].
450.220(a)(3)	Removed.
450.220(a)(4)	1410.222(a)(7).
450.220(a)(5)	1410.222(a)(8).
450.220(a)(6)	1410.222(a)(9).
None	1410(a)(10) [Added].
450.220(b) and (c)	1410.222(b) [Revised].
450.220(d)	1410.222(c) [Revised].
450.220(e)	1410.222(b)(3) [Revised].
450.220(f)	1410.222(d).
450.220(g)	1410.222(e).
450.222(a) through (d)	1410.224(a) through (d) [Revised].
None	1410.224(e) [Added].
450.224	Removed.
None	1410.226 [Added].
450.300	1410.300 [Revised].
450.302	1410.302 [Revised].
450.304	1410.304 [Revised].
450.306(a)	1410.306(a) [Revised].
450.306(b) and (c)	1410.306(b) and (c) [Revised].
450.306(d) and (g)	1410.306(f) [Revised].
450.306(e)	1410.306(d).
450.306(f)	1410.306(e).
450.306(h) through (k)	1410.306(g) through (j) [Revised].
450.308(a) through (d)	1410.308(a) through (d) [Revised].
450.308(e)	1410.308(e) [Added].
450.310(a)	1410.310(a) [Revised].

Old section	New section
450.310(b)	Removed.
None	1410.310(b) [Added].
450.310(c)	1410.310(c) [Revised].
450.310(d)	1410.310(h) [Revised].
450.310(e)	1410.310(d) [Revised].
450.310(f)	1410.310(e) [Revised].
450.310(g)	1410.310(f).
None	1410.310(g) [Added].
450.310(h)	1410.310(i).
450.312(a)	1410.312(a) [Revised].
450.312(b)	1410.312(b).
450.312(c)	1410.312(c) [Revised].
450.312(d)	1410.312(d).
450.312(e) through (i)	1410.312(e) through (i) [Revised].
None	1410.312(j) [Added].
450.314(a), (b) and (d)	1410.314(a), (b) and (c) [Revised].
450.314(c)	Removed
450.316(a)	1410.316(a) [Revised].
450.316(b)(1)	1410.316(b) [Revised].
450.316(b)(2)	1410.316(c) [Revised].
450.316(b)(3)	1410.316(d) [Revised].
450.316(b)(4)	1410.316(e) [Revised].
450.316(b)(5)	1410.316(f) [Revised].
None	1410.316(g) [Added].
450.316(c)	1410.316(h) [Revised].
450.316(d)	1410.316(i).
None	1410.316(j) [Added].
450.318	1410.318 [Revised].
450.320(a)	Removed.
450.320(b), (c) and (d)	1410.320(a), (b) and (c) [Revised].
450.322(a)	1410.322(a) [Revised].
450.322(b)(1) through (b)(7)	1410.322(b)(1) through (b)(7) [Revised].
450.322(b)(8)	Removed.
450.322(b)(9) through (b)(11)	1410.322(b)(8) through (b)(10) [Revised].
None	1410.322(b)(11) [Added].
450.322(c) and (d)	1410.322(c) and (d) [Revised].
None	1410.322(e) [Added].
450.322(e)	1410.322(f).
None	1410.322(g) [Added].
450.324(a) through (e)	1410.324(a) through (e) [Revised].
450.324(f)(1) through (f)(3)	1410.324(f)(1) through (f)(3) [Revised].
None	1410.324(f)(4) [Added].
450.324(f)(4) and (f)(5)	1410.324(f)(5) and (f)(6) [Revised].
450.324(g) through (o)	1410.324(g) through (o) [Revised].
None	1410.324(p) [Added].
450.326	1410.326 [Revised].
450.328	1410.328 [Revised].
450.330(a) and (b)	1410.330(a) and (b) [Revised].
None	1410.330(c) [Added].
450.332(a)	1410.332(b) [Revised].
450.332(b)	1410.332(c) [Revised].
450.332(c)	1410.332(a) [Revised].
450.332(d) and (e)	1410.332(d) and (e).
450.334(a)(1) through (a)(5)	1410.334(a)(1) through (a)(5) [Revised].
None	1410.334(a)(6) through (a)(8) [Added].
450.334(b) through (f)	1410.334(b) through (f) [Revised].
450.334(g)	Removed.
None	1410.334(g) [Added].
450.334(h)	1410.334(h) [Revised].
450.336	Removed.

Section-by-Section Discussion

Section 1410.100 Purpose

Current § 450.100 would be redesignated as § 1410.100 and a technical correction would be made for a legislative citation.

Section 1410.102 Applicability

Current § 450.102 would be redesignated as § 1410.102. The text of this section is unchanged.

Section 1410.104 Definitions

Current § 450.104 would be redesignated as § 1410.104. The definition of "conformity lapse" and "transportation control measure" would be added and would have the meaning given it in the EPA conformity regulation provided at 40 CFR 93.101, as follows:

The term "lapse" means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

The term "congestion management system" would replace the previous definition of "management system" and would have the meaning given in the management system rule (23 CFR part 500).

The term "consultation" would have minor wording changes, but no substantive changes.

The word "programming" would be dropped from the definition of "coordination" to reflect the fact that programming is a subset of the planning process. The project development processes reference would be added to reflect the provisions of proposed § 1410.318.

Definitions are proposed for "design concept," "design scope," "federally funded non-emergency transportation services," "financial estimate," and "freight shipper" for clarification of legislative terminology.

The term "Governor" remains the same.

The terms "illustrative project" and "ITS integration strategy" would be added to reflect new legislative provisions. The term "Indian Tribal Government" is added for clarification.

The terms "Interim Plan" and "Interim Transportation Improvement Program" are added to clarify the basis for advancing exempt and existing and new TCM projects during a conformity lapse. Interim plans and TIPs must be developed in a manner consistent with 23 U.S.C. 134. They must be based on previous planning assumptions and goals; appropriately adjusted for currently available projections for population growth, economic activity and other relevant data. The public must be involved consistent with the regular transportation plan and program development processes. Financial planning and constraint, and, as appropriate, congestion management systems requirements must be satisfied, and interim TIPs must be approved by the MPO and the Governor."

The term "maintenance area" would be revised to reflect the EPA definition used in the conformity regulation at 40 CFR parts 51 and 93.

A definition is proposed for "management and operation" to reflect the new legislative policy direction from the TEA–21.

The terms "metropolitan planning area," "metropolitan planning organization," "metropolitan transportation plan," and "nonattainment area" would remain unchanged, except for legislative references.

A definition of "non-metropolitan local official" would be added to reflect the provisions of the TEA-21 regarding consultation between the State and these officials.

The terms "plan update," "provider of freight services," and "purpose and need" would be added to provide clarification of terminology.

The definition of "regionally significant" reflects the US EPA conformity rule (40 CFR parts 51 and 93).

The terms "State," "State implementation plan," "statewide transportation plan," and "statewide transportation improvement program" would be unchanged.

A definition for "statewide transportation improvement program extension" would be added for clarification.

The term "transportation improvement program" would be revised slightly. The term "TIP update" would be added to provide information and direction on when a TIP must be updated . Anytime a non-exempt project is added to a TIP, the TIP must be updated. In attainment areas, the TIP must be updated whenever a regionally significant project is added to the TIP.

The definition of "transportation management area" would be unchanged. The terms "twenty year planning horizon, "urbanized area," and "user of public transit" would be added to clarify legislative terminology.

Subpart B—Statewide Planning and Programming

Section 1410.200 Purpose of Regulations

Current § 450.200 would be redesignated as § 1410.200. The statement of purpose would be amplified by reflecting the declaration of purpose articulated in the TEA–21. This amplification also supports greater consistency of purpose between metropolitan and statewide planning.

Section 1410.202 Applicability of Regulation

Current § 450.202 would be redesignated as § 1410.202. The text would be revised to add "project sponsors" as agencies affected by the provisions of this section.

Section 1410.204 Definitions

Current § 450.204 would be redesignated as § 1410.204. This section would remain the same.

Section 1410.206 Statewide Transportation Planning Process: Basic Requirements

Current § 450.206 would be redesignated as § 1410.206.

A new § 1410.206(a)(5) would be added. This section articulates the need for the State to develop and implement a process for demonstrating the consistency of plans and programs with the provisions of Title VI of the Civil Rights Act of 1964 and related legislation. We believe that such processes are already in place and that the clarification of minimum required information and analysis would benefit States and other agencies in meeting the existing requirement in the self-certification statement included in the STIP.

Current § 450.206(b) would be eliminated since it is redundant with § 450.210(a).

Section 1410.208 Consideration of Statewide Transportation Planning Factors

Current § 450.208 would be redesignated as § 1410.208. Paragraph (a) would be revised by substituting the seven planning factors identified in the TEA–21 for those previously identified by the ISTEA. All parenthetical amplification has been deleted and the wording is that used by the statute. We plan to issue guidance regarding interpretation and application of the planning factors. We welcome suggestions on exemplary State and MPO procedures already in place or under development, and how those might be replicated in other State or MPO planning processes. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, we will work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

We are proposing to revise paragraph (b) to focus on other considerations that the TEA–21 states should be addressed in the planning process. Specifically, the concerns of non-metropolitan local officials and Indian Tribal Governments and Federal land managing agencies are spelled out as a source of concerns that shall be considered.

Section 1410.210 Coordination of Planning Process Activities

Current § 450.210 would be redesignated as § 1410.210. Reflecting the simplification of language provided by the change in planning factors, paragraph (a) would be revised to focus on required planning coordination efforts. This general approach would eliminate the need to spell out in detail all of the specific coordination efforts previously articulated. We believe that the substance of coordination and the process overall remain intact even though the language is vastly simplified. References to the air quality planning process in § 1410.210(b) reflect the

general role afforded the State transportation planning agency in the air quality planning process under 42 U.S.C. 7504 and the desirability of ensuring coordination of the air quality and transportation planning processes. The current wording of paragraph (b) would be retained as § 1410.210(e) with the addition of "safety concerns" to the list of issues to be coordinated.

Section 1410.212 Participation by Interested Parties

Current § 450.212 would be redesignated as § 1410.212. Overall, current § 450.212 (public involvement) would be broadened to focus on all facets of participation in the statewide planning process. For example, the newly articulated provisions regarding consultation with non-metropolitan officials would be added to this section. In addition, the paragraphs would be redesignated.

Current §§ 450.212(a) through (f) would become § 1410.212(b) and be revised slightly to reflect increased emphasis for public involvement by minorities and low-income populations. The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase "and other interested parties" reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants. A new § 1410.212(d) would be added to encourage the participation of state air quality and other agencies in the transportation planning process. The existing § 450.212(g) would become § 1410.212(e).

Section 1410.212(b)(2)(vii) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings, in addition to the generally applicable requirements for public involvement processes under § 1410.212(b)(2) and § 1410.316(b).

A new § 1410.212(c) focusing on participation by Federal agencies and Indian Tribal Governments would be added to support early involvement by these agencies and governments. Such involvement will facilitate streamlining of environmental decisions and ensure adequate consideration of key interests and viewpoints. The proposed wording for the involvement of Indian Tribal Governments reflects current deliberations within the Executive Branch regarding ways to more fully inform and engage Indian Tribal Governments in Federal decision making processes.

Section 1410.214 Content and Development of Statewide Transportation Plan

Current § 450.214 would be redesignated as § 1410.214. Two new sections would be added to reflect legislative changes. Proposed § 1410.214(a)(3) would reflect the intelligent transportation system consistency requirement provided under section 5206(e) of the TEA–21. A separate rulemaking process will address the overall policy and procedures for architecture consistency. The wording reflects that portion of the consistency process that would be started in the statewide planning process for non-metropolitan area projects. We are interested in comments and observations regarding the feasibility of this process. In our view, the basic structure would reflect the activities normally conducted during transportation plan development. Proposed minor information collection additions to reflect utilization of electronic information sharing do not appear to be a major burden addition for planning.

In addition, proposed § 1410.214(d) would implement a provision, added by TEA–21, for an optional financial plan for statewide transportation plans. The TEA–21 did not impose a new requirement on the States. Rather, it offers up the option of a financial plan if decided upon by the statewide planning process participants. This section would spell out how this option would be approached through a statewide planning process.

Section 1410.216 Content and Development of Statewide Transportation Improvement Program

Current § 450.216 would be redesignated as § 1410.216. The provisions of former § 450.216(a)(1) through (a)(9) would be redesignated and revised as § 1410.216(c) providing detailed information on the STIP. A new § 1410.216(b) would spell out the need to involve certain interests in the development of the STIP. The parties identified are the same as those identified for the development of the plan.

Regarding the detailed information requested for projects identified in a STIP in § 450.216(c), a new element (§ 1410.216(c)(8)) regarding ITS projects funded with highway trust funds would be added. This section reiterates the earlier planning level discussion and would direct that projects meeting the definition in § 1410.322(b)(11) would be included in a regional architecture as indicated in the rulemaking on ITS architecture consistency.

The new wording proposed in § 1410.216(f) articulates the legislative provision of an optional financial plan for STIPs.

Section 1410.218 Relation of Planning and Project Development Processes

A new § 1410.218 would address an optional approach to linking statewide planning and project development processes in non-metropolitan areas. It mirrors proposed § 1410.318 which would apply to the metropolitan planning process. The intent of this section is to provide States with an option to more effectively rely on planning processes as a foundation for subsequent environmental and other project level analyses. Nothing in this section would mandate that a State adopt the option provided. If a State chose to take advantage of the option, the language lays out a framework to support the State's actions. This section also would make clear that project level actions shall be consistent with the State plan and program (see proposed § 1410.218(e)). For further information, please see the preamble section related to metropolitan planning, proposed § 1410.318.

Section 1410.220 Funding of Planning Process

The content of the current § 450.218 would be moved here with changes made to the references and the section heading.

Section 1410.222 Approvals, Self-certification and Findings

Current § 450.220 would be redesignated as § 1410.222. Current § 450.220(a)(2) would be revised slightly. Proposed § 1410.222(a)(3) through (a)(5) would articulate the existing legislative and regulatory authorities. Subsequent paragraphs would be redesignated and remain

generally unchanged. A new § 1410.222(a)(10) would be added.

We are proposing to modify existing § 450.220(b) slightly to indicate the relationship of the planning finding to self-certifications by the State. In addition, current language provided at § 450.220(c) would be redesignated and combined with a new § 1410.222(b) to clarify the relationship of findings with possible Federal actions.

Proposed § 1410.222(c) that details the approval period for a STIP would modify the text of current § 450.220(d). STIP extensions (and by their inclusion, TIP extensions) would be limited to 180 days. Further, no STIP extension would be granted in nonattainment and maintenance areas. We believe that this policy eliminates substantial confusion regarding application of the Clean Air Act (CAA) conformity provisions in nonattainment and maintenance areas. We also believe that the focus should be on ensuring regular STIP updates, rather than finding a way to maintain funding flows that may conflict with the provisions of the CAA. The overall limit on extensions serves the same general purpose for attainment areas of ensuring that updates are accomplished rather than continuing to rely on out of date documents.

Section 1410.224 Project Selection

Current § 450.222 would be redesignated as § 1410.224 and the references to funding categories updated. Generally, however, it would remain unchanged. Proposed new paragraph (e) would provide the option for expedited procedures where agreed to by the planning participants. The current topic of this section (§ 450.224 phase-in requirements) would be eliminated.

Section 1410.226 Applicability of NEPA to Transportation Planning and Programming

This section simply proposes to restate the provisions of the TEA–21 which direct that decisions by the Secretary regarding plans and programs are not Federal actions subject to the provisions of the NEPA.

Subpart C—Metropolitan Transportation Planning and Programming

Section 1410.300 Purpose of Planning Process

Current § 450.300 would be redesignated as § 1410.300. This statement would remain essentially unchanged. The exceptions are a minor wording change for clarity of Federal expectations with regard to plan content and the addition of the word "management" to reflect the revised declaration of policy in 23 U.S.C. 134(a) as revised by the TEA–21.

Section 1410.302 Organizations and Processes Affected by Planning Requirements

Current § 450.302 would be redesignated as § 1410.302. The principal change would be to add organizations charged with "project development" in metropolitan areas to the affected organizations. This would reflect the general emphasis of the revised rule on more efficiently and effectively linking planning and project development as a means to streamlining decision making and towards ensuring that projects are based on the planning process. The statutory authorizing language reference would be added also.

Section 1410.304 Definitions

Current § 450.304 would be redesignated as § 1410.304. This section would remain unchanged with the exception of referencing definitions in 49 U.S.C. Chapter 53.

Section 1410.306 What is a Metropolitan Planning Organization and How Is It Created

Current § 450.306 would be redesignated as § 1410.306. Minor changes are proposed for existing § 450.306(a) to provide clarity regarding the designation of multiple MPOs serving a single metropolitan area. The wording would more clearly emphasize a preference for not designating more than one MPO in metropolitan areas. We believe that this is consistent with the intent of legislative language changes and the principles of comprehensive transportation planning for metropolitan areas.

Current §§ 450.306(b) and (c) would remain unchanged. Current § 450.306(d) and (g) would be combined and redesignated as § 1410.306(f), § 450.306(e) would be redesignated as § 1410.306(d) and § 450.306(f) would be redesignated as § 1410.306(e). Editing for clarity of intent would simplify the language. Current § 450.306(e) would be redesignated as § 1410.306(d). Sections 450.306(h) through (k) would be redesignated as §§ 1410.306 (g) through (j), respectively, and revised.

Section 1410.308 Establishing the Geographic Boundaries for Metropolitan Transportation Planning Areas.

Current § 450.308 would be redesignated as § 1410.308. Revisions made by the TEA–21 to 23 U.S.C. 134 require the modification of existing § 450.308, which also would be edited for clarification of language. Boundaries in effect as of June 9, 1998, the date of presidential signature for the TEA–21, would remain in effect unless modified by the policy board of the MPO in cooperation with the Governor. The provisions of 23 U.S.C. 134, as modified by the ISTEA, required planning area boundaries to be extended to the limits of the nonattainment area where that area was larger than the transportation planning area.

New MPOs designated after June 9, 1998, would have to take into account the existence of non-attainment and maintenance areas and reflect them as agreed to by the Governor and local officials in the proposed metropolitan planning area boundaries.

In either case, the existing MPO or new MPO, non-attainment and maintenance areas left outside the metropolitan planning areas would have to be addressed in an agreement between the State and the MPO as proposed at paragraph § 1410.310(f).

The option of extending the metropolitan planning area boundary to the limits of the metropolitan statistical area would be retained as provided in the statute. This continuation and the changes discussed in the preceding paragraphs are captured in proposed revisions included in § 1410.308(a).

The wording of current § 450.308(b) would remain unchanged. The provisions of current § 450.308(c) would be slightly modified for clarification. No changes are proposed for § 450.308(d).

A new § 1410.308(e) proposes to address the expenditure of Surface Transportation Program funds attributable to a Transportation Management Area (TMA). The intent of the section is to more clearly state, what has been the FHWA and the FTA policy since 1992, that these funds cannot be expended outside the boundaries of the metropolitan area. They may be expended anywhere inside the metropolitan area including areas outside the urbanized area.

Section 1410.310 Agreements Among Organizations Involved in the Planning Process

Current § 450.310 would be redesignated as § 1410.310. Current § 450.310(a) would be retained in its current form except for the elimination of a reference to corridor and subarea studies. A new proposed § 1410.310(b) would state the overall relationship between planning and project development activities. This section would support the option for conducting project development activities as planning activities under the general relationship between

planning and project development as established under the proposed new § 1410.318.

Current § 450.310(c) would be redesignated as § 1410.310(c) and the text would remain unchanged except for minor wording revisions for clarification. Section 450.310(d) would be redesignated as § 1410.310(h) and revised for clarity. Current § 450.310(e) would be revised by dropping the reference to a definition of a prospectus in § 450.104. A definition is not required since the nature of prospectus is well established in practice as a statement of ongoing planning activities that continue from year-to-year as a foundation for producing transportation plans and programs.

The current § 450.310(f) would be redesignated as § 1410.310(e) and modified slightly by a wording change to support the revisions to the air quality and transportation planning area boundary relationship. The change is intended to suggest that actions that would leave portions of nonattainment and maintenance areas outside a metropolitan transportation planning area, but contiguous to such an area, should be addressed in consultation with the FHWA, the FTA, and the EPA. The decision to leave such areas outside a metropolitan planning area is the responsibility of the Governor and the MPO acting cooperatively.

A proposed new § 1410.310(g) has been added to reflect the impact of section 5206(e) of the TEA–21. The proposed section requires an agreement among agencies planning and implementing ITS projects and is intended to ensure that the planning and operating agencies specifically agree on an approach to integrated ITS implementation consistent with the options provided in the National ITS Architecture. This provision would direct that this relationship should be covered by agreement within the metropolitan planning area and addresses the policy and operational issues affecting ITS implementation. Where current agreements do not already address these relationships, they would be modified to reflect the provisions of this section. Where possible, existing agreements, per the provisions of § 1410.310(i), would be modified to incorporate the ITS integration strategy required under proposed § 1410.322(b)(11).

A new proposed § 1410.310(h) would permit a single agreement for all activities under § 1410.310 where agreed to by the participants. The wording in current § 450.310(h) remains unchanged from its current text and would be included in a redesignated § 1410.310(i).

Section 1410.312 Planning Process Organizational Relationships

Current § 450.312 would be redesignated as § 1410.312. Existing § 450.312(a) would be redesignated as § 1410.312(a) and modified in several places to reflect wording changes in the subsequent provisions of §§ 1410.314 through 1410.322. A phrase would be made to reflect international border planning with Canada and Mexico.

The text of current § 450.312(b) would be redesignated as § 1410.312(b) and remain unchanged.

The organization of current § 450.312(c) and some of the previous content would be modified and redesignated as § 1410.312(c). The content modifications are intended to clarify how MPO transportation planning activities and planning products are related to air quality planning activities and products. Under 42 U.S.C. 7504, MPOs and State transportation planning organizations are expected to have a formal role in air quality planning. At another level, the transportation and air quality planning processes would work more efficiently if the responsible agencies were more actively engaged in each other's processes. Hence, the proposed rule would more explicitly direct MPOs to participate in air quality planning activities. We would expect that the air quality planning agencies, under the U.S. EPA's conformity regulation (40 CFR parts 51 and 93), would be actively engaged in the transportation planning process. The development of transportation control measures is specifically revised to clarify that new TCMs proposed for funding with FHWA and/or FTA transportation funds or requiring an FHWA or FTA approval can occur during a conformity lapse, if new TCMs are included in an interim plan and interim TIP that satisfy the provisions of this part and are approved into a SIP with identified emission reduction benefits (specified but not necessarily credited in the applicable SIP). The proposals herein implement and clarify the planning regulations consistent with the "National Memorandum of Understanding between the US Department of Transportation and the US Environmental Protection Agency," which was signed on April 19, 2000. This memorandum of understanding outlines procedures for advancing new TCMs during a conformity lapse.

Current § 450.312(d) would be redesignated as § 1410.312(d) and remain unchanged.

Minor wording changes would be made to current § 450.312(e) [proposed § 1410.312(e)] to clarify required coordination in circumstances where more than one MPO is involved in transportation planning for a contiguous metropolitan area, including multi-state areas.

Proposed § 1410.312(f) (current § 450.312(f)) would be revised for text clarity. Proposed § 1410.312(g) (current § 450.312(g)) would be revised to remove a specific reference to cooperative development of the congestion management system (CMS) since it is incorporated in the management system regulation provided at 23 CFR part 500.

Current § 450.312(h) is redesignated as § 1410.312(h) and revised. Proposed § 1410.312(i) (current § 450.312(i)) would be revised by replacing the words "involved appropriately" with "consulted" to more accurately reflect the statutory intention.

A new § 1410.312(j) is proposed to reflect the legislative changes of the TEA–21 which added several new discretionary grant programs. This section asserts that the projects (other than planning and research activities) funded through these programs must be addressed through the transportation planning process and included, as appropriate, in transportation plans and programs. Planning and research activities funded under the referenced programs are addressed in the Unified Planning Work Programs (UPWP) for each metropolitan planning area.

Section 1410.314 Planning Tasks and Work Program

Current § 450.314(a) would be redesignated as § 1410.314(a). The provisions of this overall section remain largely unchanged except for wording revisions for clarity or to reflect modifications in other sections, e.g., elimination of the MIS proposed under § 1410.318. One change to § 450.314(a) proposes to drop the reference to TMAs. This is intended to suggest that all MPOs have a responsibility to meet the requirements of this section. It does not prevent a smaller, attainment area MPO from proposing a prospectus or a simplified work program. Paragraph (c) of current § 450.314 would be revised and redesignated as § 1410.314(c). A new paragraph (d) will be added as § 1410.314(d).

Section 1410.316 Transportation Plan Development

Current § 450.316 would be redesignated as § 1410.316. Overall this section has extensive proposed revisions for several reasons. The

metropolitan planning factors were revised by the TEA–21; reduced in number from 16 to 7. The wording in § 450.316(a) would be revised by substituting the seven planning factors identified in the TEA–21 for those previously identified by the ISTEA. All parenthetical amplification would be removed and the wording would be the same as that used in the statute. We plan to issue guidance regarding interpretation and application of the planning factors. This will be especially true of new planning goals, such as safety, environmental considerations, and operations and management, which have been added to the list.

The US EPA has suggested that the FTA and the FHWA amplify and elaborate the detail in the regulation regarding the meaning of the planning factors. The agencies have kept the language as stipulated in the statute. However, the agencies believe that substantial benefits can be realized by States and MPOs in applying the planning factors, under §§ 1410.214 and 1410.316(a), aggressively, most notably in supporting the provisions of § 450.318 below. The planning factors can serve as a key focal point for developing plans and programs and MPOs and States may develop specific rationales to guide their utilization in the plan development process. Indeed, where States and MPOs choose to develop their own performance criteria to monitor the results of planning, they may be well served by utilizing the planning factors as a base for those criteria. The FTA and the FHWA will support efforts by States and MPOs to utilize such criteria by addressing them in Federal reviews and assessments. In addition, the agencies will seek to develop specific examples of how the planning factors can support effective plan development and environmental streamlining. Streamlining, as an activity to reduce project level burden and delay, could be more readily achieved if the planning process provides an early consideration of the planning factors.

The FHWA and the FTA welcome suggestions on exemplary State and MPO procedures or data collection efforts already in place or under development and how those might be replicated in other State or MPO planning processes. We are interested also in specialized training efforts, e.g., safety, that may have been developed or needed by States and MPOs. We also recognize that it will take some time to develop syntheses of current practices and other tools. However, it is our intent to work with States, MPOs, and others to ensure that tools and examples are made available in a timely manner.

The public involvement provisions would be modified for clarity and would reflect the provisions of Presidential Executive Order 12898 on Environmental Justice and implementing DOT and FHWA orders. Similar changes have been made regarding references to compliance with the provisions of Title VI of the Civil Rights Act of 1964. The organization of § 450.316 would be modified slightly to reflect these changes and to provide clarity in understanding them.

The listing of interested parties to be afforded an opportunity to comment is revised to reflect the addition of transit users and freight service providers in statute. This listing reflects the wording of the statute. The FHWA and the FTA believe that the phrase "and other interested parties" reflects the intent of Congress to ensure that all citizens and groups are afforded an opportunity to participate. Comments are solicited as to whether there is a need to further elaborate the listing so as to demonstrate that the specific groups do not constitute an exclusive list of participants.

Section 1410.316(b)(9) makes provision for a periodic evaluation of its public involvement procedures by the State. The FHWA and the FTA believe that the assessment of such processes on a routine basis ensures their effectiveness and enhances continued improvement. The FHWA and the FTA also believe that the effectiveness of public involvement processes can be strengthened through the voluntary development of criteria on which to assess performance by States and MPOs. Where such criteria have been developed by the planning partners, the FHWA and the FTA will consider them in their certification reviews and planning findings.

Relatively small scale modifications to the public involvement provisions are proposed as follows: (1) The provision of timely information will be modified to encourage engagement of the public during the early stages of plan and TIP development; (2) demonstration of timely response to comments received would be revised to highlight response to input from minority and low-income populations; and (3) periodic MPO evaluations of public involvement effectiveness would now include an emphasis on the success obtained in engaging minority and low-income populations.

Current § 450.316(b)(2) is proposed to be redesignated as § 1410.316(c). Additional attention is drawn to the provisions of Executive Order 12898 and implementing DOT and FHWA orders. Specifically, data necessary for the purposes of conducting planning analyses for plan development are identified as contributors to the demonstration of compliance with the Executive Order. We are required to assure compliance with the Executive Order and will rely on the data identified under this section for that purpose. In addition, the statutory and regulatory requirements identified in this section apply to State DOTs, MPOs, and transit operators. Consequently, additional data and analyses are proposed as a basis for demonstrating that plans and resulting programs will be consistent with the referenced statutory requirements. Additional guidance will be issued to refine and amplify the basic framework established by these provisions. We believe, however, that much of the proposed data specification was previously required for assertions of compliance with Title VI and related statutory authorities and, hence, should not require a major new data collection effort.

In addition to the revised requirements of this section, the FHWA and the FTA continue to encourage attention to the selection of members of boards and committees that represent the demographic profile of the metropolitan planning area served. The ability to meet the needs of the community is enhanced by efforts designed to provide voice to as many segments of its membership as possible. The FHWA and the FTA solicit comments regarding additional strategies that may be effective in serving the interests of inclusiveness in transportation decision making.

Current §§ 450.316(b)(3) through 450.316(b)(5) would be redesignated as § 1410.316(d) through (f). Current § 450.316(c) would be redesignated as § 1410.316(g) and revised for clarity. Current § 450.316(d) is proposed to be redesignated as § 1410.316(h).

Proposed § 1410.316(i) is offered to encourage the coordination of federally funded non-emergency transportation services per the requirements of section 1203(d)(4) of the TEA–21. The section simply restates the legislative language.

Section 1410.318 Relation of Planning and Project Development Processes

The TEA–21 eliminates the major investment study (MIS) as a separate requirement as set forth in the planning regulations and calls for integration of the requirement, as appropriate, into the planning and NEPA analyses required under proposed 23 CFR parts 1410 and 1420. Accordingly, current § 450.318

would be revised to focus on the relationship between the planning and project development processes.

Section 1308 of the TEA–21 directs the US DOT Secretary to eliminate the separate MIS and its elements and integrate the remaining aspects of the MIS into the planning and NEPA regulations. The FHWA and FTA have attempted to do this by focusing on the fundamental basics of the MIS process, i.e., the cooperative relationship of planning and project development agencies, the early engagement of permit and resource agencies, flexible definition of the need to do analyses as decided by the participants and an appropriate level of public involvement. The MIS process did not require a specific methodology for studying alternatives, a specific set of alternatives to study, a particular format for reports, a specific public involvement or analytical process, or a specific set of projects to which the MIS applied. The US EPA has specifically suggested that the MIS process required and should require the use of cost benefit, costs effectiveness analysis and/or other related analytical techniques. The logic of this proposal is that early, effective consideration of social, environmental and economic considerations in planning analyses should permit more expedited consideration of these same issues, at a more micro level of detail, for subsequent NEPA analyses. By linking the planning and project development processes more effectively, the participants can reduce time required, analytical redundancy and process requirements by utilizing previously conducted work as a basis for subsequent analyses and efforts. It is the belief of the FTA and the FHWA that an aggressive utilization of the options provided here can strengthen the planning process and streamline the project development process substantially. The agencies are specifically interested in comments that address the extent to which the remaining aspects of the MIS process have been included in this proposal and suggestions for encouraging States and MPOs to more effectively take advantage of the options provided herein.

The overall structure of the relationship emphasizes alternatives for planning and sponsor agencies to integrate decision processes to take advantage of potential streamlining opportunities and for early consultation among the MPOs, State DOTs, and transit operators. The planning process is charged with providing an initial statement of purpose and need for proposed transportation improvements, identifying and evaluating alternatives (including, but not limited to, design concept and scope) and selecting an alternative and including it in the plan. This statement would not necessarily lead to a determination of purpose and need on a project-by-project basis for transportation improvements normally grouped (not specified individually) in a plan. An alternative could be a programmatic statement of purpose and need that identifies the basis for investing resources in a given transportation area such as safety or pavement resurfacing.

The consideration of alternatives and other planning level analyses done in support of plan development do not eliminate the need for considering all reasonable alternatives during the NEPA process. However, to the extent that the planning participants anticipate the required consideration of all reasonable alternatives in the planning process, they will significantly enhance, in our view, the efficiency of the NEPA process. Well documented, thorough planning analyses should permit the NEPA process to accept this information as a sound basis for reducing the alternatives considered and the detail required for others in the NEPA process. Provision also is made for policy preferences and guidance from planning policy bodies to be included on the record for consideration in subsequent decision steps.

Examples of issues that might be covered in the planning level consideration of alternatives include: the consideration of alternatives that in the past have been rejected for not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternatives analysis that examines "no-build" alternatives that use transportation demand strategies; and, flexibility to encourage the selection of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings. The FHWA and the FTA will work with the US EPA on guidance and training in this regard.

A number of alternative sources of information are identified as a basis for the development of purpose and need, a planning level analysis of alternatives (primarily at the level of concept and scope) and specification of a project for inclusion in the transportation plan. These information sources are utilized at the discretion of participating agencies (MPO, State DOT, and transit agency) acting jointly. The underlying logic of the proposal is that if the options to document thoroughly and analyze fully are chosen, this effort will lead to expedited analytical efforts in subsequent NEPA analyses. Less robust analytical and documentation efforts would force elaboration and analysis of alternatives during the NEPA process.

The utilization of planning analyses as a basis for project development actions is explained. In particular the regulatory language specifies that the results of planning analyses shall serve as input to the environmental process under proposed 23 CFR part 1420 (current part 771), and other project level actions. Proposed § 1410.318(c) references the contents of proposed § 1420.201 to provide a frame of reference to data and analytical expectations in subsequent NEPA process steps, *i.e.*, the standard of analysis expected by the NEPA process for projects. Planning, systems level, analyses that address these data and analytical requirements can improve the efficiency of the NEPA process and reduce data and analytical efforts required.

The ability to streamline the planning and environmental relationship is dependent, in part, on appropriate decisions made by the planning participants. They can choose to develop a rigorous basis for establishing transportation purpose and need, identifying alternatives for evaluation, and assessing these alternatives through the planning process. Alternatively, they can choose to apply minimal analytical techniques. At the time the NEPA analyses are undertaken for project development, the agencies participating in that process will review the materials provided by the planning process. Minimal analyses in planning will have to be supplemented and elaborated to satisfy the needs of the NEPA process. More robust planning analyses should allow the NEPA process to reduce the need for revisiting and re-evaluating planning level studies and instead proceed to focus on project level considerations of location and design. Consequently, the consideration of alternatives should be more quickly and efficiently accomplished.

A similar option exists with regard to documentation of planning results. A set of planning activities to be documented to facilitate this linkage is specified in § 1410.318(a)(2). The option to document is a discretionary option of the planning participants in cooperation with appropriate project sponsors. The focus is not on the details of documents but rather on the act of documenting the results of analyses and studies. Robust analyses coupled with sound documentation will permit more effective linkage and utilization of

planning analyses and data collection in subsequent NEPA analyses.

The early involvement of Federal and State environmental and permit agencies is encouraged under proposed § 1410.318(d) to facilitate linking planning and environmental processes. The involvement of the FTA is required where planning studies are proposed to satisfy requirements of the Major Capital Investment Program administered by the FTA under 49 CFR part 611. The TEA–21 directive that Federal decisions on plans and programs are not considered a Federal action for NEPA purposes is restated in proposed § 1410.318(f) (the FHWA and the FTA do not approve plans but they do approve the State TIP which is not subject to NEPA). Finally, the basis for Federal project actions in plans and TIPs is specifically stated. The intent of this latter provision, in proposed § 1410.318(g), is to clearly substantiate the need for projects to be in plans before Federal actions can be taken on them. A particular point is made that project actions and the appropriate phase of a project must be in a plan and TIP before project actions can be taken.

Section 1410.320 Congestion Management System and Planning Process

Current § 450.320 would be redesignated as § 1410.320 and would be revised to reflect the impact of the issuance of the Management System rule (23 CFR part 500) and the National Highway System Act of 1995, Public Law 104–59, 109 Stat. 568. The latter made management systems optional, except for the congestion management system in transportation management areas (TMA). Hence, the proposed language focuses on the continuing provisions of the congestion management system in TMAs, including the limitation on single occupant vehicle capacity increases which remains unchanged under the TEA–21. With the exception of current § 450.320(a) which would be removed, the remainder of the overall section is generally unchanged.

One option considered, but not included in this proposal, is to revise 23 CFR part 500 by transferring the provisions dealing with the congestion management system to the metropolitan planning rule. The FHWA and the FTA would welcome comments on this idea with regard to its utility and appropriateness.

Section 1410.322 Transportation Plan Content

Current § 450.322 would be redesignated as § 1410.322. Current § 450.322(a) would be modified by adding a discussion of data assumptions for plan updates. Specifically, the language would clarify what must be considered in preparing a plan update, as a minimum. It also would reaffirm that the MPO must approve the content of a new plan or reaffirm existing plan content in conducting an update. We have chosen to provide this clarification in response to requests from stakeholders and to emphasize that a plan is a critical document. Piecemeal revisions that incrementally revise plans do not constitute an appropriate, accurate or meaningful basis for plan development, implementation, and/or subsequent decision making.

A proposed minor revision would be made to § 450.322(b)(2) to reflect the emphasis on management and operation of the transportation system.

Current §§ 450.322(b)(3) through (b)(6) would remain unchanged with the exception of minor edits for clarity. Current § 450.322(b)(7) would be revised to reflect the elimination of the MIS and redesignated as § 1410.322(b)(7). Current § 450.322(b)(8) would be removed. Current §§ 450.322(b)(9) and (10) would be redesignated as §§ 1410.322(b)(8) and (9), respectively.

Current § 450.322(b)(11) would be redesignated as § 1410.322(b)(10) and remain generally unchanged except for the addition of the reference to "illustrative projects." Illustrative projects have no standing for transportation or air quality purposes until such time as a financing source has been identified and they have been formally amended into the plan by action of the MPO. At that point they could be added to a TIP as a project to be advanced. We expect that the MPO would coordinate its actions with the State DOT and transit operator and vice versa. Once formally added to a plan and TIP, these projects may be included in regional conformity findings, advanced, and subject to appropriate project level actions by the FHWA and the FTA.

The remainder of § 450.322(b)(10) would remain generally unchanged since the TEA–21 either did not change key provisions or reenforced previous provisions required through regulation (*e.g.*, cooperative estimates of revenue for plan development). With regard to estimated revenues, we have opted to rely on a cooperative process of State, MPO and transit operator estimation based on local preferences and arrangements. We would support the cooperative process through the provision of guidance and identification of good practices for emulation.

A new § 1410.322(b)(11) proposes to focus on intelligent transportation systems (ITS) and the National ITS Architecture. As provided in section 5206(e) of TEA–21, we have issued interim guidance on compliance with this new legislative requirement. This proposed wording is intended to be an integral element of the proposed regulatory issuance on compliance with this requirement. A companion NPRM issuance will be made for project development and national policy on consistency with the National ITS Architecture. It will support planning as the initial stage at which this consistency must begin. We are issuing the planning component through this NPRM and solicit comments on this proposal.

The existing wording of § 450.322(c) would be redesignated as § 1410.322(c) and would be modified to add users of public transit and freight shippers as directed by the TEA–21. A minor modification would be made to § 450.322(d) (proposed § 1410.322(d)) to clarify that if either the MPO or we fail to make a conformity determination, the Governor or the Governor's designee must be notified.

A new § 1410.322(e) would refine the operating approach to plan changes and updates. The question of a 20-year horizon has received substantial discussion as indicated previously. As part of the clarification of the meaning of the term "20-year horizon," we are proposing that a plan is valid for transportation purposes if it has a twenty year horizon at the time of adoption. If no major changes are made to the plan, *e.g.*, the addition of a non-exempt project, then the plan would remain valid as a basis for Federal actions until its next regularly scheduled update. This proposal also indicates that it is our intent that conformity determinations by the FHWA/FTA be made as close as possible to the MPO plan conformity finding, *i.e.*, as soon as possible after MPO plan adoption and conformity determination actions are taken. The three year period and the twenty year horizon would start at the point a Federal conformity determination is made on the plan for a nonattainment or maintenance area. This will eliminate confusion over the validity of the transportation plan in relation to air quality conformity determination. A new conformity determination would be required within eighteen months of certain SIP actions according to 40 CFR 93.104, even if the three year period had not expired at the time. In an attainment area, the plan would be valid for five

years from MPO approval so long as no regionally significant projects are added.

The current requirement of § 450.322(e) that new plans and plan updates be provided to us would be included in proposed § 1410.322(f).

A new § 1410.322(g) would be added to authorize utilization of an interim plan during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded during a conformity lapse when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the applicable SIP). Inclusion in the SIP would have to occur before such TCMs can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim plan may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

Section 1410.324 Transportation Improvement Program Content

Existing §§ 450.324(a) through (e) would have minor modifications to the text and be redesignated as §§ 1410.324(a) through (e). Please note, however, that an addition to proposed § 1410.324(b) would reflect the changes in proposed § 1410.222(c) to limit STIP/TIP extensions to 180 days in attainment areas. The prohibition against STIP/TIP extensions in nonattainment and maintenance areas is present also in proposed § 1410.324(b). Additionally, the current wording reflects TEA–21's confirmation of the previous regulatory provisions; most notably, the cooperative estimate of available funds. As indicated above, the estimation process would be achieved through locally identified processes.

In existing § 450.324 (proposed § 1410.324), proposed paragraph (f)(1) would be unmodified. Paragraph (f)(2) would be modified to reflect changes in funding categories (*e.g.*, minimum guarantee, etc.) and the elimination of the exemption for Motor Carrier State Assistance Program and 23 U.S.C. 402 safety program projects from being included in a TIP. The exemption for these two categories would be removed to reflect the ITS consistency requirement discussed above and the requirement that transportation projects funded with Federal-aid funds must satisfy the requirements of 23 U.S.C. and, where appropriate, be found conforming for air quality purposes.

In current § 450.324(f)(3) (redesignated as § 1410.324(f)(3)), "approval" would be changed to "action" to reflect a broader concept regarding the range of our activities taken with regard to projects, *i.e.*, not all of them are labeled "approvals" but, yet, they must still be based on plans and programs.

Current §§ 450.324(f)(4) and (f)(5) would be modified and redesignated as §§ 1410.324(f)(5) and (f)(6), respectively. The changes are intended to clarify that all regionally significant projects in air quality non-attainment and maintenance areas, whether funded federally or otherwise, would be included in the metropolitan TIP. This allows full consideration of all projects in a regional conformity determination and ensures that the provisions of the CAA are met.

The three year conformity period for a TIP would start from the date of the conformity determination by the FHWA and the FTA. It is our expectation that the time period from the point of a Federal conformity determination on the TIP and its inclusion by the Governor's action in the STIP and the subsequent gubernatorial approval of the STIP and planning finding and STIP approval by the FHWA and the FTA would be monitored to ensure efficient and expeditious processing by all parties.

With the exception of proposed minor changes for clarification regarding fiscal constraint, § 450.324(g) (proposed § 1410.324(g)) would be unchanged. The changes would reiterate the need for specification of funding sources for projects included in a TIP. The wording of existing § 450.324(h) (proposed § 1410.324(h)) would be unchanged. The content of § 450.324(i) (proposed § 1410.324(i)) would be modified to indicate that only regionally significant projects funded under Chapter 2 of 23 U.S.C. need be specifically identified in a TIP. These projects are typically "Federal Lands" projects, *e.g.*, Indian Reservation Roads, National Park Service Road, etc. The existing §§ 450.324(j) through (m) (proposed § 1410.324(j) through (m)) would be generally unchanged except for statutory reference modifications.

Existing § 450.324(n) (proposed § 1410.324(n)) would be modified to include an indication that projects are to be included on the TIP until fully authorized. A new § 1410.324(n)(5) is proposed to require that the TIP shall serve as the basis for an annual listing of projects, supplemented as appropriate, to ensure adequate public information regarding projects funded with Federal monies. Both changes are geared at ensuring greater clarity as to what projects must be included on a TIP.

The second change to proposed § 1410.324(n) serves another purpose—encouraging greater public knowledge regarding which projects have been advanced. In this case, we are opting to allow the planning participants the flexibility to design a process to comply with the legislative directive provided in section 134(h)(7)(B) of title 23 U.S.C. for an annual listing of projects. While the statute focuses on the MPO, we believe that the State DOT, transit operator, and the MPO operating jointly can produce the required information.

The MPO, in cooperation with its planning partners would, under this proposal, utilize the TIP as the basis for the annual listing. Each year the participating agencies would identify the projects that advanced (or did not) and publish the "list" jointly, in a fashion consistent with the public involvement provisions for the metropolitan area. Changes to the TIP would be acknowledged and reflected in modifications to the annual listing as appropriate.

Current § 450.324(o) would be redesignated as § 1410.324(o) with no other changes.

In general, we believe that it may be possible to further streamline the information and procedural requirements expected of TIPs, particularly with regard to financial information. We would be interested in any possible information reduction options that may be possible while maintaining the principles and practices of sound public involvement and fiscal constraint.

A new § 1410.324(p) would be added to authorize utilization of an interim TIP during an anticipated conformity lapse. It is the intent of this section to permit funding of existing exempt, transportation control measures (TCMs) and other projects that can advance under a conformity lapse in accordance with 40 CFR parts 51 and 93. New TCMs under this provision can only be approved or funded when they have been included in an approved SIP with identified emission reduction benefits (but not necessarily credited in the

applicable SIP). These TCMs would have to be included in the SIP before they can be advanced into completion of the NEPA process, design, right of way acquisition and/or construction). An interim plan may be used during a conformity lapse to advance projects that can proceed according to 40 CFR parts 51 and 93, including existing TCMs and existing and new exempt projects. It is the expectation of the US DOT that this provision would be utilized for new TCM projects where a conformity lapse would persist for six months or longer. An interim TIP may be used for periods of less than six months to advance existing TCM and existing and new exempt projects.

Section 1410.326 Transportation Improvement Program Modification

Current § 450.326 would be redesignated as § 1410.326. The only change to this section would be to clarify when a new conformity determination is necessary. The addition of non-exempt projects, or replacement of an existing TIP by a new TIP, requires a new conformity determination. Similarly, moving a project or a phase of a project from year four, five, or later of a TIP to the first three years would be an amendment and require a new conformity determination. We believe that frequent modification of TIPs through the addition of non-exempt projects is inconsistent with the principles of fiscal constraint and public involvement. Hence, we intend to make it clear that a new conformity determination is necessary unless the changes to TIPs are minor, i.e., addition or deletion of exempt projects.

Section 450.328 Transportation Improvement Program Relationship to Statewide TIP

Current § 450.328 would be redesignated as § 1410.328. The text would remain unchanged.

Section 1410.330 Transportation Improvement Program Action by FHWA/FTA

Current § 450.330 would be redesignated as § 1410.330. The provisions of current §§ 450.330(a) and (b) would be redesignated as §§ 1410.330(a) and (b). There would be very minor wording changes for clarification or technical corrections. A new § 1410.330(c) would be added to address the addition of "illustrative projects" to TIPs. This paragraph makes it clear that no Federal action may be taken on these projects until they become formally included in the TIP as indicated previously.

Consistent with the overall purposes of the planning process and the need for Federal actions on planning processes and products as appropriate as described in this proposed regulation, project funding is contingent on the existence of a plan and TIP. If a plan and TIP are not updated as required herein, new funding actions cannot be taken.

Section 1410.332 Selecting Projects from a TIP

Current § 450.332 would be redesignated as § 1410.332. Current §§ 450.332(a), (b) and (c) would be redesignated as §§ 1410.332((b), (c) and (a), respectively, with only citation corrections to the text. Proposed §§ 1410.332(d) and (e) (current §§ 450.332(d) and (e), respectively) would include citation corrections and in paragraph (e) the word "will" would become "shall" to reflect the force of law under the CAA. Consistent with previous program practice by the FHWA and the FTA, selecting a project for advancement from year two or three of a TIP does not require a TIP amendment.

Section 1410.334 Certifications

Current § 450.334 would be redesignated as § 1410.334. Current § 450.334(a) would have three new paragraphs (a)(6) through (a)(8) under this proposal. These paragraphs add references to compliance with additional Federal statutes but do not represent new compliance requirements. These requirements previously existed and the regulations would be revised to point out their existence.

Paragraph (d) would be revised to clarify the basis for Federal certification actions in relation to Federal findings during the review process. The wording of current paragraph (e) would be the same as the sanctions specified in paragraph (f). Current paragraph (g) would be eliminated to reflect changes made by the TEA–21 (related to the failure to remain certified for two years after October 1994). A new proposed § 1410.334(g) would focus on the new statutory requirement for public involvement during a certification review. We previously required this through administrative directive. Hence, there would be no change in practice, other than to further encourage broad public outreach as part of certification reviews.

Phase-in of New Requirements

No phase-in period for any requirements under the TEA–21 is proposed. Current § 450.336 would be removed. Comments on the desirability of such requirements and the specific areas for which they are warranted are welcome.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, we will continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

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

We have determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866 and under Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. This rulemaking is a revision to an existing regulation for which the costs of compliance have previously been addressed. The modifications proposed herein are intended to reduce current regulatory requirements (*e.g.*, simplification of planning factors, elimination of separate MIS requirement, simplification of planning area boundary establishment, etc.) and to add some additional data analysis requirements (*e.g.*, elaboration of environmental justice data analyses, preparation of an Intelligent Transportation Systems Integration Strategy, addition of operations and management responsibility, etc.). In preparing this proposal, the agencies have sought to maintain existing flexibility of operation wherever possible for States, MPOs, and other affected organizations and utilize already existing processes to accomplish any new tasks or activities. As a result, we believe that the economic impact of this rulemaking in comparison to the existing regulation should be the same or less.

The marginal additional costs associated with these proposed rules are attributable to the streamlining

provisions of the TEA–21. Achieving the goals of these provisions more efficiently and effectively warrants the regulatory changes proposed herein. Furthermore, we provide substantial financial assistance to States and MPOs to support compliance with the regulatory requirements of this part. Funding for the planning process increased substantially under the TEA–21 and should, we believe, off-set much of the economic impact on entities complying with these requirements.

This proposed rule would revise existing metropolitan planning regulations of the FHWA and the FTA and conform those regulations to requirements of the TEA–21. While they incorporate some new requirements, the bulk of them have been in place for many years and States and metropolitan planning organizations have been implementing them. In the past, we have provided funding to support planning activities and production of required transportation documents, *e.g.*, transportation plans and improvement programs. During Fiscal Year 1999, the FHWA will provide in excess of $187 million for metropolitan planning and $492 million for State planning and research activities. The FTA provided $42 million for metropolitan planning. For both agencies, there is a statutory matching grant requirement which stipulates that recipients must match Federal funds at least on an 80 percent Federal, 20 percent recipient basis. To meet the State planning funds matching requirement, States will expend approximately $98 million. The MPOs will have to provide approximately $46 million of non-Federal funds to match the Federal metropolitan planning funds (the FHWA and the FTA funds combined). If the States and other recipient's choose not to accept Federal support for transportation they would not have to develop the plans and programs stipulated in this proposed rule. Hence, the Federal government provides a substantial economic incentive to encourage State and metropolitan planning. In addition, these rules support the EPA conformity regulation at 40 CFR parts 53 and 91 which establishes requirements for MPOs to perform regional transportation and emissions modeling and to document the regional air quality impacts of transportation improvements contained in plans and programs.

The impacts on the States and MPOs result mainly from modified data collection and analysis activities that may be necessary to implement the TEA–21 planning provisions. A single new provision in § 1410.322(b)(11) focuses on the requirements for satisfying section 5206(e) of the TEA–21 regarding demonstrating consistency of Intelligent Transportation Systems projects funded with highway trust fund dollars with the provisions of the National ITS Architecture. The economic impacts of this provision are addressed in the regulatory analysis being prepared for the specific rulemaking on ITS architecture consistency. We anticipate that the elements required in the planning process for ITS consistency would generally be undertaken anyway as a part of the plan development activities and do not require significant new processes or requirements of MPOs and States.

In general, we believe that the rule changes proposed here have added limited regulatory requirements. The impact of complying with the changes can be minimized by States and MPOs by using the flexibility provided in the proposed rule to reduce data collection and analysis costs. While there may be additional costs to some States and MPOs, the TEA–21 significantly increased the mandatory set-aside in Federal funds that must be used for transportation planning, and in addition, gives the States and MPOs the flexibility to use Federal capital dollars for transportation planning if they so desire. We are interested in the costs to States and MPOs of complying with the proposed requirements, including the expenditure of State and MPO funds above the required matching amounts. Comments on this matter are welcome.

The agencies welcome comment on the economic impacts of these proposed regulations. Comments, including those from the States and MPOs, regarding specific burdens, impacts, and costs would be most welcome and would aid us in more fully appreciating the impacts of this ongoing planning process requirement. Hence, we encourage comments on all facets of this proposal regarding its costs, burden, and impact.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354; 5 U.S.C. 601–612), we have evaluated the effects of these rules on small entities, such as, local governments and businesses. The proposed metropolitan and statewide planning regulations modify existing planning requirements. These modifications are substantially dictated by the statutory provisions of the TEA–21. We believe that the flexibility available to States and MPOs in responding to requirements has been maintained, if not enhanced, in this proposal. Accordingly, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial number of small entities.

We are interested in any comments regarding the potential economic impacts of these proposed rules on small entities and governments. Of specific concern are the additional costs of the incremental changes in our regulatory requirements. The agencies believe that these costs have been off-set largely by reduced statutory requirements and the flexibility built into the regulations. The agencies are requesting comments on these issues.

Executive Order 13132 (Federalism Assessment)

This proposed action has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA–21 and its predecessors authorize the Secretary to implement the provisions for metropolitan and statewide planning. We believe that policies in these proposed rules are consistent with the principles, criteria and requirements of the Federalism Executive Order and the TEA–21. Comments on these conclusions are welcomed and should be submitted to the docket.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway planning and Construction (or 20.217); 20.500, Federal Transit Capital Improvement Grants; 20.505, Federal Transit Technical Studies Grants; 20.507, Federal Transit Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation in Federal programs and activities apply to these programs.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. We have determined that this proposal contains a requirement for minor additional data

collection to satisfy the provisions of the TEA–21 associated with ITS and environmental justice. The FHWA and the FTA believe that this burden increase has been off-set by decreases in requirements associated with the seven planning factors and related matters.

The reporting requirements for metropolitan UPWPs, transportation plans and transportation improvement programs are currently approved under OMB control number 2132–0529. An extension request was filed with OMB on January 28, 2000, and a Notice of Request for Extension was published in the **Federal Register** on April 7, 2000 (65 FR 18421). The analysis supporting this approval was conducted by the FTA on behalf of both the FTA and the FHWA since the regulations are jointly issued by both agencies. The reporting requirements for statewide transportation plans and programs are also approved under this same OMB control number. The information collection requirements addressed under the current OMB approval number (2132–0529) impose a total burden of 241,850 hours on the planning agencies that must comply with the requirements in the existing regulation. We initiated the preparation of materials to obtain a new three year approval from OMB in January 2000. The request for a new data collection approval will be filed with OMB before publication of this NPRM. The FHWA and the FTA are soliciting comments on this NPRM regarding the extent to which any additional burden, beyond that associated with the current collection requirement, will be incurred by States and MPOs.

The creation and submission of required reports and documents have been constrained to those specifically required by the TEA–21 or essential to the performance of our findings, certifications and/or approvals. The State plans are prepared on cycles individually determined by the States; the average is 10 such submissions per year. The State TIPs are prepared every two years. Approximately one third of all metropolitan areas prepare new plans every three years. The remaining metropolitan plans are updated every five years. We have assumed a distribution over several years for the plans. We have assumed that half of all TIPs are submitted annually. We assume an annual submission of unified planning work programs. By distributing the added burden for preparing these various submissions, the net result would be a minimal burden increase for each type of submission.

Interested parties are invited to send 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 FHWA and the FTA; (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. Comments submitted in response to the NPRM will be summarized and/or included in the request for OMB's clearance of this information collection.

National Environmental Policy Act

We have analyzed these proposed actions for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). It is our determination this action is consistent with the provisions of 23 CFR 771.117(c)(20) which deems the issuance of regulations of this nature to meet the requirements for a Categorical Exclusion.

Unfunded Mandates Reform Act of 1995

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

The requirements of 23 U.S.C. 134 and 135 are supported by Federal funds administered by the FHWA and the FTA. There is a legislatively established local matching requirement for these funds of twenty percent of the total project cost. The FHWA and the FTA believe that the costs of complying with these requirements is predominantly covered by the funds they administer. However, as has been the case with previous regulatory issuances, we welcome comments from States, MPOs, transit agencies and other organizations regarding the extent to which the cost of compliance is covered by the funds provided.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Regulation Identification Number

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

List of Subjects

23 CFR Parts 450 and 1410

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 613

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 621

Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

Federal Highway Administration

23 CFR Chapter I

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 134, 135, and 315, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

PART 450—[REMOVED]

1. Remove part 450.

23 CFR Chapter IV

2. For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to establish a new chapter IV in title 23, Code of Federal Regulations, consisting of part 1410 as set forth below:

CHAPTER IV—FEDERAL HIGHWAY ADMINISTRATION AND FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 1410—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Definitions

Subpart B—Statewide Transportation Planning and Programming

Subpart C—Metropolitan Transportation Planning and Programming

Authority: 23 U.S.C. 134, 135, 315; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5305; 49 CFR 1.48 and 1.51.

Subpart A Definitions

§ 1410.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part which go beyond those terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302.

§ 1410.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 1410.104 Definitions.

Except as defined in this subpart, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

Conformity lapse means that the conformity determination for a transportation plan or TIP has expired, and thus there is no currently conforming transportation plan and TIP.

Conformity rule means the EPA Transportation Conformity Rule, as amended, 40 CFR parts 51 and 93.

Congestion management system means a systematic process for managing congestion that provides information on transportation system performance and on alternative strategies for alleviating congestion and enhancing the mobility of persons and goods to levels that meet State and local needs.

Consultation means that one party confers with another party, in accordance with an established process, about an anticipated action and then keeps that party informed about actions taken.

Cooperation means that the parties involved in carrying out the planning and/or project development processes work together to achieve a common goal or objective.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs and schedules of other agencies and adjustment of plans, programs and schedules to achieve general consistency.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial estimate means a projection of Federal and State resources that will serve as a basis for developing plans and /or TIPs.

Freight shipper means an entity that utilizes a freight carrier in the movement of its goods.

Governor means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

Illustrative project means a transportation improvement that would be included in a financially constrained transportation plan and program if reasonable additional financial resources were available to support it.

Indian Tribal Government means a duly formed governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Interim plan means a plan composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including adoption by the MPOs.

Interim transportation improvement program means a TIP composed of projects eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93) and otherwise meeting all other provisions of this part including approval by the Governor.

ITS integration strategy means a systematic approach for coordinating and implementing intelligent transportation system investments funded with Federal highway trust funds to achieve an integrated regional system.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the Clean Air Act Amendments of 1990 (CAA) and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Management and operation means actions and strategies aimed at improving the person, vehicle and/or freight carrying capacity, safety, efficiency and effectiveness of the existing and future transportation system to enhance mobility and accessibility in the area served.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5306 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decision making for the metropolitan planning area pursuant to 23 U.S.C. 134 and 49 U.S.C. 5303.

Metropolitan transportation plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area, in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Non-metropolitan local official means elected or appointed officials of general purpose local government, outside metropolitan planning areas, with jurisdiction/responsibility for transportation or other community development actions that impact transportation and elected officials for special transportation and planning agencies, such as economic development districts and land use planning agencies.

Provider of freight transportation services means a shipper or carrier which transports or otherwise facilitates the movement of goods from one point to another.

Purpose and need means the intended outcome and sustaining rationale for a proposed transportation improvement, including, but not limited, to mobility deficiencies for identified populations and geographic areas.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

State implementation plan (SIP) means:

(1) The implementation plan which contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy Clean Air Act (CAA) requirements for demonstrations of reasonable further progress and attainment (CAA secs. 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and secs.192(a) and 192(b), for nitrogen dioxide of the CAA); or

(2) The implementation plan under section 175A of the CAA as amended.

Statewide transportation improvement program (STIP) means a staged, multi-year, statewide, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan plans, TIPs and processes pursuant to 23 U.S.C. 135.

Statewide transportation improvement program (STIP) extension means the lengthening of the scheduled duration of an existing STIP, including the component metropolitan TIPs included in the STIP, beyond two years by joint administrative action of the FHWA and the FTA. STIP extensions are not allowed for metropolitan TIP portions of the STIP which are in nonattainment or maintenance areas as well as for those portions of the STIP containing projects in rural nonattainment or maintenance areas.

Statewide transportation plan means the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process pursuant to 23 U.S.C. 135.

TIP update means the periodic re-examination and revision of TIP contents, including, but not limited to, non-exempt projects, on a scheduled basis, normally at least every two years. The addition or deletion of a non-exempt project or phase of a non-exempt project to a TIP shall be based on a comprehensive update of the TIP.

Transportation control measure means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a staged, multi-year, intermodal program of transportation projects in the metropolitan planning area which is consistent with the metropolitan transportation plan.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

Transportation plan update means the periodic review, revision or reaffirmation of plan content, normally every three years in nonattainment and maintenance areas and five years in attainment areas or the update period for State plans as determined by the State.

Twenty year planning horizon means a forecast period covering twenty years from the date of plan adoption, reaffirmation or modification in attainment areas and subsequent Federal conformity finding at the time of adoption in nonattainment and maintenance areas. The plan must reflect the most recent planning assumptions for current and future population, travel, land use, congestion, employment, economic activity and other related statistical measures for the metropolitan planning area.

Urbanized area (UZA) means a geographic area with a population of at least 50,000 as designated by the U.S. Department of Commerce, Bureau of the Census based on the latest decennial census or special census as appropriate.

User of public transit means any person or group representing such persons who use mass transportation open to the public other than taxis and other privately operated vehicles.

Subpart B—Statewide Transportation Planning and Programming

§ 1410.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 135, which requires each State to carry out a transportation planning process that shall be continuing, cooperative, and

comprehensive to the degree appropriate, based on the complexity of the transportation problems to be addressed. The transportation planning process shall be intermodal and shall develop a statewide transportation plan and transportation improvement program for all areas of the State, including those areas subject to the requirements of 23 U.S.C. 134 and 49 U.S.C. 5303–5305. The plan and program shall facilitate the development and integrated management and operation of safe transportation systems and facilities (including pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system for the State and an integral part of an intermodal transportation system for the United States. The intermodal transportation system shall provide for safe, efficient, economic movement of people and goods in all areas of the State and foster economic growth and development while minimizing transportation-related fuel consumption and air pollution.

§ 1410.202 Applicability.

The provisions of this subpart are applicable to States and any other agencies/organizations, such as MPOs, transit operators and air quality agencies, that are responsible for satisfying these requirements for transportation planning, programming and project development throughout the State pursuant to 23 U.S.C. 135.

§ 1410.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

§ 1410.206 Statewide transportation planning process basic requirements.

(a) The statewide transportation planning process shall include, as a minimum, the following:

(1) Data collection and analysis;

(2) Consideration of factors contained in § 1410.208;

(3) Coordination of activities as noted in § 1410.210;

(4) Development of a statewide transportation plan for all areas of the State that considers a range of transportation options designed to meet the transportation needs (*e.g.*, passenger, freight, safety, etc.) of the State including all modes and their connections;

(5) Development of a statewide transportation improvement program (STIP) for all areas of the State; and

(6) Various processes to accomplish data collection and analyses essential for an effective transportation planning process, including a process to assure that, no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the U.S. Department of Transportation. These assurances shall be demonstrated through the following:

(i) An assessment covering the State, including at a minimum the following:

(A) A geographic and demographic profile of the State that identifies the low-income and minority, and where appropriate, elderly and persons with disabilities, components of this profile;

(B) The transportation services available to or planned for these segments of the State population;

(C) Any disproportionately high and adverse environmental effects, including interrelated social and economic effects, consistent with the provisions of Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859) as implemented through US DOT Order 5610.2 and FHWA Order 6640.23; [1] and

(D) Any denial of or a reduction in benefits;

(ii) Consideration of comments received during public involvement efforts (consistent with the provisions of § 1410.212(b)) to ensure that expressed concerns of the elderly, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(iii) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(iv) The results of paragraphs (a)(5)(i), (ii) and (iii) of this section will be documented in a manner to permit public review during appropriate project development activities;

(v) The State may rely on information provided by a metropolitan planning organization for those segments of the population in metropolitan planning areas of the State; and

(vi) In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in paragraphs (a)(5)(i) through (vi) of this section are intended to nor shall they create any right to judicial review of any action taken by the agency, its officers or its recipients taken under this part to comply with such Orders.

(b) [Reserved].

[1] DOT order 5610.2 and FHWA order 6640.23 are available for inspection and copying from DOT headquarters and field offices as prescribed at 49 CFR part 7.

§ 1410.208 Consideration of statewide transportation planning factors.

(a) Each statewide transportation planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the United States, the States, and metropolitan areas, especially by enabling global competitiveness, productivity and efficiency;

(2) Increase the safety and security of the transportation system for motorized and nonmotorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the preservation of the existing transportation system.

(b) In addition, in carrying out statewide transportation planning, the State shall consider, at a minimum, the following and other factors and issues that the planning process participants might identify which are important considerations within the statewide transportation planning process:

(1) With respect to nonmetropolitan areas, the concerns of local elected officials representing units of general purpose local government; and

(2) The concerns of Indian Tribal Governments and Federal land management agencies that have jurisdiction over land within the boundaries of the State.

§ 1410.210 Coordination of planning process activities.

(a) The statewide transportation planning process shall be carried out in coordination with adjacent States, adjacent countries as appropriate at the international borders, and with the metropolitan planning process required by subpart C of this part.

(b) The statewide transportation planning process shall be coordinated with air quality planning and provide for appropriate conformity analyses to the extent required by the Clean Air Act (40 U.S.C. 175 and 176). The State shall carry out its responsibilities for the development of the transportation portion of the State Implementation Plan to the extent required by the Clean Air Act (42 U.S.C. 7504), as appropriate within the statewide transportation planning process.

(c) Development of transportation plans, programs and planning activities shall be coordinated with related planning activities being carried out outside of metropolitan planning areas.

(d) The statewide transportation planning process shall provide a forum for coordinating data collection and analyses to support, planning, programming and project development decisions.

(e) The degree of coordination shall be based on the scale and complexity of many issues including transportation problems, safety concerns, land use, employment, economic, environmental, and housing and community development objectives, and other circumstances statewide or in subareas within the State.

§ 1410.212 Participation by interested parties.

(a) Non-metropolitan local official participation.

(1) The State shall have a documented process for consultation with local officials in non-metropolitan areas within the continuing, cooperative and comprehensive planning process for development of the statewide transportation plan and the statewide transportation improvement program. The process shall be documented and cooperatively developed by both the State and nonmetropolitan local officials.

(2) The process for participation of nonmetropolitan local officials shall not be reviewed or approved by the FHWA and the FTA. However, local official participation will be among the issues considered by the FHWA and the FTA in making the transportation planning finding called for in § 1410.222(b).

(b) Public involvement.

(1) Public involvement processes shall be open and proactive by providing complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement.

(2) To satisfy these objectives public involvement processes shall provide for:

(i) Early and continuing public involvement opportunities throughout the transportation planning and programming process; and

(ii) Timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, freight shippers, providers of freight transportation services, representatives of users of public transit, and other interested parties and segments of the community affected by transportation plans, programs, and projects;

(iii) Reasonable public access to technical and policy information used in the development of the plan and STIP;

(iv) Adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited, to action on the plan and STIP;

(v) A process for demonstrating explicit consideration and response to public input during the planning and program development process, including responses to input received from persons with disabilities and minority, elderly, and low-income populations;

(vi) A process for seeking out and considering the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income and minority populations which may face challenges accessing employment and other amenities;

(vii) Periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all and revision of the process as necessary, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low-income populations.

(3) Public involvement activities carried out in a metropolitan area in response to metropolitan planning requirements in § 1410.322(c) or § 1410.324(c) may by agreement of the State and the MPO satisfy the requirements of this section.

(4) During initial development and major revisions of the statewide transportation plan required under § 1410.214, the State shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers providers of freight transportation services and other interested parties a reasonable opportunity to comment on the proposed plan. The proposed plan shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. Likewise, the official statewide transportation plan (see § 1410.214(d)) shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(5) During development and major revision of the statewide transportation improvement program required under § 1410.216, the Governor shall provide citizens, affected public agencies and jurisdictions, representatives of transportation agency employees, private and public providers of transportation, representatives of users of public transit, freight shippers, providers of freight transportation services and other interested parties, a reasonable opportunity for review and comment on the proposed program. The proposed program shall be published, with reasonable notification of its availability, or otherwise made readily available for public review and comment. The approved program (see § 1410.222(b)) if it differs significantly from the proposed program, shall be published, with reasonable notification of its availability, or otherwise made readily available for public information.

(6) The time provided for public review and comment for minor revisions to the statewide transportation plan or statewide transportation improvement program shall be determined by the State and local officials based on the complexity of the revisions.

(7) The State shall, as appropriate, provide for public comment on existing and proposed procedures for public involvement throughout the statewide transportation planning and programming process. As a minimum, the State shall publish procedures and allow 45 days for public review and written comment before the procedures and any major revisions to existing procedures are adopted.

(c) Federal agency and other government participation. The transportation planning process shall allow for participation of other governments and agencies, particularly Indian Tribal Governments and Federal lands managing agencies. The process for consulting with Indian Tribal Governments and Federal lands managing agencies shall be cooperatively developed and documented by both the State and the Indian Tribal Government(s) or the respective Federal lands managing agency.

(d) State air quality agency and other state agency participation. The transportation planning process shall allow for participation of the State air quality agency and other state agencies as determined appropriate by the planning process participants.

(e) Participation and the planning finding. The processes for participation of interested parties will be considered by the FHWA and the FTA as they make the planning finding required in § 1410.222(b) to assure that full and

open access is provided to the decision making process.

§ 1410.214 Content and development of statewide transportation plan.

(a) The State shall develop a statewide transportation plan that shall:

(1) Cover all areas of the State;

(2) Be intermodal (including consideration and provision, as applicable, of elements and connections of and between transit, non-motorized, rail, commercial motor vehicle, waterway, and aviation facilities, particularly with respect to intercity travel) and statewide in scope in order to facilitate the safe and efficient movement of people and goods;

(3) Address the development of intelligent transportation systems (ITS) investment strategies, including an ITS Integration Strategy consistent with the provisions of § 1410.322(b)(11), to support the development of integrated technology based investments, including metropolitan and non-metropolitan investments. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the level of resources and staging of planned investments. ITS Integration Strategy shall be developed and documented no later than the first update of the transportation plan or STIP that occurs two years following the effective date of the final rule;

(4) Be reasonably consistent in time horizon among its elements, but cover a forecast period of at least 20 years;

(5) Provide for development and integrated management and operation of bicycle and pedestrian transportation system and facilities which are appropriately interconnected with other modes;

(6) Be coordinated with the metropolitan transportation plans required under 23 U.S.C. 134 and 49 U.S.C. 5303;

(7) Reference, summarize or contain any applicable short range planning studies, strategic planning and/or policy studies, transportation needs studies, management system reports and any statements of policies, goals and objectives regarding issues, such as, transportation, economic development, housing, social and environmental effects, energy, etc., that were significant to development of the plan;

(8) Reference, summarize or contain information on the availability of financial (including as appropriate an optional financial plan consistent with 23 CFR 1410.214(d)) and other resources needed to carry out the plan; and

(9) Contain strategies that ensure timely compliance with the applicable SIP.

(b) The following entities shall be involved in the development of the statewide transportation plan:

(1) MPOs shall be involved on a cooperation basis for the portions of the plan affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the plan affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting areas of the State under their jurisdiction;

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in nonmetropolitan areas of the State.

(c) In developing the statewide transportation plan, the State shall:

(1) Provide for participation by interested parties as required under § 1410.212;

(2) Provide for consideration and analysis as appropriate of specified factors as required under § 1410.208;

(3) Provide for coordination as required under § 1410.210; and

(4) Identify transportation strategies necessary to efficiently serve the mobility needs of people.

(d) The statewide transportation plan may include a financial plan that:

(1) Demonstrates how the adopted transportation plan can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the adopted transportation plan if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary of Transportation on the STIP.

(e) The State shall provide and carry out a mechanism to adopt the plan as the official statewide transportation plan.

(f) The plan shall be continually evaluated and periodically updated, as appropriate, using the procedures in this section for development and establishment of the plan.

§ 1410.216 Content and development of statewide transportation improvement program (STIP).

(a) Each State shall develop a statewide transportation improvement program for all areas of the State. In case of difficulties in developing the STIP portion for a particular area, *e.g.*, metropolitan area, Indian Tribal lands, etc., a partial STIP covering the rest of the State may be developed. The portion of the STIP in a metropolitan planning area (the metropolitan TIP developed pursuant to subpart C of this part) shall be developed in cooperation with the MPO. To assist metropolitan TIP development the State, the MPO and the transit operator will cooperatively develop timely estimates of available Federal and State funds which are to be utilized in developing the metropolitan TIP. Metropolitan planning area TIPs shall be included without modification in the STIP, directly or by reference, once approved by the MPO and the Governor and after needed conformity findings are made. Metropolitan TIPs in nonattainment and maintenance areas are subject to the FHWA and the FTA conformity findings before their inclusion in the STIP. In nonattainment and maintenance areas outside metropolitan planning areas, Federal findings of conformity must be made prior to placing projects in the STIP. The State shall notify the appropriate MPO, local jurisdictions, Federal land management agency, Indian Tribal Government, etc., when a TIP including projects under the jurisdiction of the agency has been included in the STIP. All title 23 U.S.C. and 49 U.S.C. Chapter 53 fund recipients will share information as projects in the STIP are implemented. The Governor shall provide for participation of interested parties in development of the STIP as required by § 1410.212.

(b) The following entities shall be involved in the development of the statewide transportation improvement program:

(1) MPOs shall be involved on a cooperation basis for the portions of the program affecting metropolitan planning areas;

(2) Indian Tribal Governments and the Secretary of the Interior shall be involved on a consultation basis for the portions of the program affecting areas of the State under the jurisdiction of an Indian Tribal Government;

(3) Federal lands managing agencies shall be involved on a consultation basis for the portions of the program affecting

areas of the State under their jurisdiction; and

(4) Affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in nonmetropolitan areas of the State.

(c) The STIP shall:

(1) Include a list of priority transportation projects proposed to be carried out in the first three years of the STIP. Since each TIP is approved by the Governor, the TIP priorities will dictate STIP priorities for each individual metropolitan area. As a minimum, the lists shall group the projects that are to be undertaken in each of the years, *e.g.*, year 1, year 2, year 3;

(2) Cover a period of not less than three years, but may at State discretion cover a longer period. If the STIP covers more than three years, the projects in the additional years will be considered by the FHWA and the FTA only as informational;

(3) Contain only projects consistent with the statewide plan developed under § 1410.214;

(4) In nonattainment and maintenance areas, contain only transportation projects that have been found to conform, or which come from programs that conform, in accordance with the requirements contained in the EPA conformity regulation 40 CFR parts 51 and 93;

(5) Contain a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. The STIP financial constraint will be demonstrated and maintained by year and the STIP shall include sufficient financial information to demonstrate which projects are to be implemented using current revenues and which projects are to be implemented using proposed revenue sources while the system as a whole is being adequately operated and maintained. In nonattainment and maintenance areas, projects included in the first two years of the current STIP/TIP shall be limited to those for which funds are available or committed. In the case of proposed funding sources, strategies for ensuring their availability shall be identified, preferably in an optional financial plan consistent with § 1410.216(f);

(6) Contain all capital and non-capital transportation projects (including transportation enhancements, safety, Federal lands highways projects, trails projects, pedestrian walkways, and bicycle transportation facilities), or identified phases of transportation projects, proposed for funding under 49 U.S.C. Chapter 53 and/or title 23, U.S.C., excluding:

(i) Metropolitan planning projects funded under 23 U.S.C. 104(f) and 49 U.S.C. 5303;

(ii) State planning and research projects funded under 23 U.S.C. 307(c)(1) and 49 U.S.C. 5313(b)(except those funded with national highway system (NHS), surface transportation program (STP) and minimum guarantee funds that the State and MPO for a metropolitan area agree should be in the TIP and consequently must be in the STIP); and

(iii) Emergency relief projects (except those involving substantial functional, locational or capacity changes);

(7) Contain all regionally significant transportation projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with title 23, U.S.C., or 49 U.S.C. Chapter 53 funds, and/or selected funds administered by the Federal Railroad Administration, *e.g.*, addition of an interchange to the Interstate System with State, local and/or private funds, high priority or demonstration projects not funded under title 23, U.S.C., or 49 U.S.C. Chapter 53. (The STIP should include all regionally significant transportation projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA. It should also include, for information purposes, if appropriate and cited in any TIPs, all regionally significant projects, to be funded with non-Federal funds);

(8) Identify ITS projects funded with highway trust fund monies, including as appropriate an integration strategy, consistent with the statewide plan. Where ITS projects are identified that fit the provisions of § 1410.322(b)(11), an agreement shall exist between participating agencies in the project area that will govern their implementation.

(9) Include for each project or phase the following:

(i) Sufficient descriptive material (*i.e.*, type of work, termini, length, etc.) to identify the project or phase;

(ii) Estimated total project cost, which may extend beyond the three years of the STIP;

(iii) The amount of funds proposed to be obligated during each program year for the project or phase;

(iv) For the first year, the proposed category of Federal funds and source(s) of non-Federal funds for the project or phase;

(v) For the second and third years, the likely category of Federal funds and sources of non-Federal funds for the project or phase;

(vi) Identification of the agencies responsible for carrying out the project or phase; and

(10) For non-metropolitan areas, include in the first year only those projects which have been selected in accordance with the requirements in § 1410.224(c).

(d) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 1420.311(c) and (d) and/or 40 CFR part 93. In addition, projects funded under chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line item, unless they are determined to be regionally significant.

(e) Projects in any of the first three years of the STIP may be moved to any other of the first three years of the STIP subject to the requirements of § 1410.224.

(f) The statewide transportation improvement program may include a financial plan that:

(1) Demonstrates how the adopted transportation improvement program can be implemented;

(2) Indicates resources from public and private sources that are reasonably expected to be made available to carry out the program;

(3) Recommends any additional financing strategies for needed projects and programs;

(4) Might include, for illustrative purposes, additional projects that would be included in the transportation improvement program if reasonable additional resources beyond those identified in the financial plan were available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the Secretary on the STIP.

(g) The STIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this section (for STIP development), in § 1410.212 (for interested party participation) and in § 1410.222 (for the FHWA and the FTA approval).

§ 1410.218 Relation of planning and project development processes.

(a) Depending upon its character and the level of detail desired as determined by the planning process participants, the statewide planning process products and analyses can be utilized as input to subsequent project development. The process described in § 1410.318 relating planning and project development may

be utilized at the discretion of the statewide transportation planning process participants in non-metropolitan areas. Analyses performed within the statewide planning process to support project development lead to a statement of purpose and need for regionally significant proposed transportation investments.

(b) The results of analyses conducted under paragraph (a) of this section, at the option of the planning participants, may:

(1) Be documented as part of the plan development record for consideration in subsequent project development actions;

(2) Serve as input to the NEPA process required under 23 CFR 1420;

(3) Provide a basis, in part, for project level decision making; and

(4) Be proposed for consideration as support for actions and decisions by federal agencies other than US DOT;

(c) To the extent feasible, Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan, shall be involved in planning analyses and studies as a means to reduce subsequent project development analyses and studies, support decisionmaking, and provide early identification of key concerns for later consideration and analysis as needed. Where the processes available under § 1410.318(f) are invoked, the FHWA and the FTA shall be consulted.

(d) Nothing in this section shall be interpreted as requiring formal NEPA review of or action on plans and TIPs.

(e) The FHWA and the FTA project level actions, including, but not limited to issuance of a categorical exclusion, finding of no significant impact or a final environmental impact statement under 23 CFR 1420, right of way acquisition (with the exception of hardship and protective buying actions), interstate interchange approvals, high occupancy vehicle (HOV) conversions, funding of ITS projects, project conformity analyses and approval of final design and construction and transit vehicle acquisition may not be completed unless the proposed project action is included in a STIP which meets the requirements of this subpart. None of these project level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the EPA's conformity rule (40 CFR parts 51 and 93).

§ 1410.220 Funding of planning process.

Funds provided under 49 U.S.C. 5303, 5307, 5309, 5311, and 5313(b) and 23 U.S.C. 104(b)(1), 104(b)(3), 104(f), 105, and 505(a) may be used to accomplish activities in this subpart.

§ 1410.222 Approvals, self-certification and findings.

(a) At least every two years, each State shall submit the entire proposed STIP, and amendments as necessary, concurrently to the FHWA and the FTA for joint approval. The State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303–5305 and 5323(k), and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230);

(3) Section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324);

(4) The Older Americans Act of 1965, as amended (42 U.S.C. 6101); and

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35);

(6) Section 1101 of the Transportation Equity Act for the 21st Century (Public Law 105–178) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(8) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities;

(9) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act as amended (42 U.S.C. 7504, 7506 (c) and (d)); and

(10) all other applicable provisions of Federal law.

(b) The FHWA and the FTA Administrators, in consultation with, where applicable, Federal land managing agencies, will review the STIP or amendment and jointly make a finding (based on self-certifications made by the State and appropriate reviews established and conducted by FTA and FHWA) as to the extent the projects in the STIP are based on a planning process that meets or substantially meets the requirements of title 23, U.S.C., 49 U.S.C. Chapter 53 and subparts A, B, and C of this part.

(1) If, upon review, the FHWA and the FTA Administrators jointly find that the planning process through which the STIP was developed meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will unconditionally approve the STIP.

(2) If the FHWA and the FTA administrators jointly find that the planning process through which the STIP was developed substantially meets the requirements of 23 U.S.C. 135 and these regulations (including subpart C where a metropolitan TIP is involved), they will act on the STIP or amendment as follows:

(i) Joint conditional approval of the STIP subject to certain corrective actions being taken;

(ii) Joint conditional approval of the STIP as the basis for approval of identified categories of projects; and/or

(iii) Under special circumstances, joint conditional approval of a partial STIP covering only a portion of the State.

(3) If, upon review, the FHWA and the FTA Administrators jointly find that the STIP or amendment does not substantially meet the requirements of 23 U.S.C. 135 and this part for any identified categories of projects, they will not approve the STIP or amendment.

(c) The joint approval period for a new STIP or amended STIP shall not exceed two years. Where the State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new STIP or amended STIP for approval, the FHWA and the FTA will consider and take appropriate action on requests to extend the approval beyond two years for all or part of the STIP for a limited period of time, not to exceed 180 days. Where the request involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request and if the delay was due to the development and approval of the TIP, the affected MPO(s) must provide supporting information, in writing, for the request. If nonattainment and/or maintenance areas are involved, a request for an extension cannot be granted.

(d) The FHWA and the FTA will notify the State of actions taken under this section.

(e) Where necessary in order to maintain or establish operations, the Federal Transit Administrator and/or the Federal Highway Administrator may approve operating assistance for specific projects or programs funded under 49 U.S.C. 5307 and 5311 even though the projects or programs may not be included in an approved STIP.

§ 1410.224 Project selection.

(a) Except as provided in §§ 1410.222(e) and 1410.216(c)(6), only

projects included in the federally approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects requiring 23 U.S.C. or 49 U.S.C. Chapter 53 funds administered by the FHWA or the FTA shall be selected from the approved TIP/STIP in accordance with procedures established pursuant to the project selection portion of the metropolitan planning regulation in subpart C of this part.

(c) Outside metropolitan planning areas, transportation projects undertaken on the National Highway System with title 23 funds and under the bridge and Interstate maintenance programs shall be selected from the approved STIP by the State in consultation with the affected local officials. Federal lands highway projects shall be selected from the approved STIP in accordance with 23 U.S.C. 204. Other transportation projects undertaken with funds administered by the FHWA shall be selected from the approved STIP by the State in cooperation with the affected local officials, and projects undertaken with 49 U.S.C. Chapter 53 funds shall be selected from the approved STIP by the State in cooperation with the appropriate affected local officials and transit operators.

(d) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) or (c) of this section is required for the implementing agency to proceed with these projects except that if appropriated Federal funds available are significantly less than the authorized amounts, § 1410.332(c) provides for a revised list of "agreed to" projects to be developed upon the request of the State, the MPO, or transit operators. If an implementing agency wishes to proceed with a project in the second and third year of the STIP, the procedures in paragraphs (b) and (c) of this section or as agreed to by the parties under paragraph (e) of this section must be used.

(e) Expedited procedures which provide for the advancement of projects from the second or third years of the STIP may be used if agreed to by all the parties involved in the selection process.

§ 1410.226 Applicability of NEPA to transportation planning and programming.

Any decision by the Secretary concerning a transportation plan or transportation improvement program developed through the processes provided for in 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 through 5305, shall not be considered to be a Federal action subject to review under NEPA.

Subpart C—Metropolitan Transportation Planning and Programming

§ 1410.300 Purpose of planning process.

The purpose of this subpart is to implement 23 U.S.C. 134 and 49 U.S.C. 5303–5306 which require that a Metropolitan Planning Organization (MPO) be designated for each urbanized area (UZA) and that the metropolitan area have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs that consider all transportation modes and support metropolitan community development and social goals. The transportation plan and program shall facilitate the development, management and operation of an integrated, intermodal transportation system that enables the safe, efficient, economic movement of people and goods.

§ 1410.302 Organizations and processes affected by planning requirements.

The provisions of this subpart are applicable to agencies responsible for satisfying the requirements of the transportation planning, programming, and project development processes in metropolitan planning areas pursuant to 23 U.S.C. 134.

§ 1410.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this part as so defined.

§ 1410.306 What is a Metropolitan Planning Organization and how is it created?

(a) Designations of metropolitan planning organizations (MPOs) made after December 18, 1991, shall be by agreement among the Governor(s) and units of general purpose local governments representing 75 percent of the affected metropolitan population (including the central city or cities as defined by the Bureau of the Census), or in accordance with procedures established by applicable State or local law. A single metropolitan planning organization, to the extent possible, shall be designated to serve a metropolitan planning area containing:

(1) A single UZA, or

(2) Multiple UZAs that are contiguous with each other or located within the same Metropolitan Statistical Area (MSA).

(b) The designation or redesignation shall clearly identify the policy body that is the forum for cooperative decision making that will be taking the required approval actions as the MPO.

(c) To the extent possible, the MPO designated should be established under specific State legislation, State enabling legislation, or by interstate compact, and shall have authority to carry out metropolitan transportation planning.

(d) Nothing in this subpart shall be deemed to prohibit an MPO from utilizing the staff resources of other agencies to carry out selected elements of the planning process.

(e) Existing MPO designations remain valid until a new MPO is redesignated. Redesignation is accomplished by the Governor and local units of government representing 75 percent of the population in the area served by the existing MPO (the central city(ies) must be among those desiring to revoke the MPO designation). If the Governor and local officials decide to redesignate an existing MPO, but do not formally revoke the existing MPO designation, the existing MPO designation remains in effect until a new MPO is formally designated.

(f) Redesignation of an MPO in a multistate metropolitan area requires the approval of the Governor of each State and local officials representing 75 percent of the population in the entire metropolitan planning area. The local officials in the central city(ies) must be among those agreeing to the redesignation.

(g) Redesignation of an MPO covering more than one UZA requires the approval of the Governor(s) and local officials representing 75 percent of the population in the metropolitan planning area covered by the current MPO. The local officials in the central city(ies) in each urbanized area must be among those agreeing to the redesignation.

(h) The voting membership of an MPO policy body designated/redesignated subsequent to December 18, 1991, and serving a TMA, must include representation of local elected officials, officials of agencies that administer or operate major modes or systems of transportation, *e.g.*, transit operators, sponsors of major local airports, maritime ports, rail operators, etc. (including all transportation agencies that were included in the MPO on June 1, 1991), and appropriate State officials. Where agencies that operate other major modes of transportation do not already have a voice on existing MPOs, the MPOs (in cooperation with the States) are encouraged to provide such agencies a voice in the decision making process, including representation/membership

on the policy body and/or other appropriate committees. Further, where appropriate, existing MPOs should increase the representation of local elected officials on the policy board and other committees as a means for encouraging their greater involvement in MPO processes. Adding such representation to an MPO will not, in itself, constitute a redesignation action.

(i) Where the metropolitan planning area boundary for a previously designated MPO needs to be expanded, the membership on the MPO policy body and other committees, should be reviewed to ensure that the added area has appropriate representation.

(j) Adding membership (*e.g.*, local elected officials and operators of major modes or systems of transportation, or representatives of newly urbanized areas) to the policy body or expansion of the metropolitan planning area does not automatically require redesignation of the MPO. This may be done without a formal redesignation. The Governor and MPO shall review the previous MPO designation, State and local law, MPO bylaws, *etc.*, to determine if this can be accomplished without a formal redesignation. If redesignation is considered necessary, the existing MPO will remain in effect until a new MPO is formally designated or the existing designation is formally revoked in accordance with the procedures of this section.

§ 1410.308 Establishing the geographic boundaries for metropolitan transportation planning areas.

(a) The metropolitan planning area boundary shall, as a minimum, cover the UZA(s) and the contiguous geographic area(s) likely to become urbanized within, at a minimum, the twenty year forecast period covered by the transportation plan described in § 1410.322.

(1) For existing MPOs, unless modified by agreement of the Governor and the MPO, the planning area boundaries shall be those in existence as of June 9, 1998. For MPOs designated after June 9, 1998, the boundaries shall be those agreed to by the Governor and local officials as indicated in § 1410.306(a).

(2) The boundary may encompass the entire metropolitan statistical area or consolidated metropolitan statistical area, as defined by the Bureau of the Census.

(3) For new MPOs, the planning area boundary shall reflect agreements between the MPO and the State DOT regarding the relationship of the metropolitan planning area boundary to any nonattainment and maintenance area within its designated limits or contiguous nonattainment or maintenance area excluded from the boundary.

(b) The metropolitan planning area for a new UZA served by an existing or new MPO shall be established in accordance with these criteria. The current planning area boundaries for previously designated UZAs shall be reviewed and modified if necessary to comply with these criteria.

(c) In addition to the criteria in paragraph (a) of this section, the planning areas currently in use for all transportation modes should be reviewed before establishing the metropolitan planning area boundary. Where appropriate, adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes and their operational integration, and promotes efficient overall transportation investment strategies in support of mobility and accessibility.

(d) Approval of metropolitan planning area boundaries by the FHWA and/or the FTA is not required. However, metropolitan planning area boundary maps must be submitted to the FHWA and the FTA after their approval by the MPO and the Governor and be made publicly available.

(e) The STP funds suballocated to urbanized areas greater than 200,000 in population shall not be utilized for projects outside the metropolitan planning area boundary.

§ 1410.310 Agreements among organizations involved in the planning process.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding among the State(s), operators of publicly owned mass transit, and the MPO.

(b) Where project development activities are conducted under the planning process, they shall be documented in an agreement between the MPO and the applicable project sponsor addressing, at a minimum, the provisions of § 1410.318.

(c) In nonattainment or maintenance areas, if the MPO is not designated as the agency responsible for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) Where the parties involved agree, the requirement for agreements specified in paragraphs (a), (b), and (c) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program or a prospectus.

(e) If the metropolitan planning area does not include the entire nonattainment or maintenance area, there shall be an agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the metropolitan planning area but within the nonattainment or maintenance area. The agreement must indicate how the total transportation related emissions for the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation related emissions that may arise between the metropolitan planning area and the portion of the nonattainment or maintenance area outside the metropolitan planning area. Proposals to exclude a portion of the nonattainment or maintenance area from the planning area boundary shall be coordinated with the FHWA, the FTA, the EPA, and the State air quality agency before a final boundary decision is made for the metropolitan planning area.

(f) Where more than one MPO has authority within a metropolitan planning area, a nonattainment or maintenance area, and/or in the case of adjoining metropolitan planning areas, there shall be an agreement between the State department(s) of transportation and the MPOs describing how the processes and projects will be coordinated to assure the development of an overall transportation plan for the planning area(s). In metropolitan planning areas that are nonattainment or maintenance areas, the agreement shall include State and local air quality agencies, and be consistent with the provisions of § 1410.312(c). The agreement shall address policy mechanisms for resolving potential conflicts that may arise between the MPOs, *e.g.*, issues related to the exclusion of a portion of the nonattainment area from the planning area boundary.

(g) Where the planning process develops an ITS Integration Strategy

under the provisions of § 1410.322(b)(11), there shall be an agreement among the MPO, the State DOT, the transit operator and other agencies as described in the ITS Integration Strategy. This agreement shall address policy and operational issues that will affect the successful implementation of the ITS Integration Strategy, including at a minimum ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects identified in the ITS Integration Strategy;

(h) To the extent possible, a single cooperative agreement containing the understandings required by paragraphs (a) through (c) of this section among the State(s), the MPO, publicly owned operators of mass transportation services, and air quality agencies may be developed. Where the participating planning organizations desire, they may further consolidate agreements required by paragraphs (d) through (g) of this section with those addressed in paragraphs (a) through (c) of this section.

(i) For all requirements specified in paragraphs (a) through (h) of this section, existing agreements shall be reviewed by the MPO, the State DOT and the transit operator for compliance and reaffirmed or modified as necessary to ensure participation by all appropriate modes.

§ 1410.312 Planning process organizational relationships.

(a) The MPO in cooperation with the State and with operators of publicly owned transit services shall be responsible for carrying out the metropolitan transportation planning process. The MPO, the State and transit operator(s) shall cooperatively determine their mutual responsibilities in the conduct of the planning process. They shall cooperatively develop the unified planning work program, transportation plan, and transportation improvement program specified in §§ 1410.314 through 1410.332. In addition, the development of the plan and TIP shall be coordinated with other providers of transportation, *e.g.*, sponsors of regional airports, maritime port operators, rail freight operators, and where appropriate, planning agencies in Mexico and/or Canada.

(b) The MPO shall approve the metropolitan transportation plan, plan amendments and plan updates. The MPO and the Governor shall approve the metropolitan transportation improvement program and any amendments.

(c) In nonattainment or maintenance areas:

(1) The transportation and air quality planning processes shall be coordinated;

(2) TCMs proposed for FHWA and FTA funding and/or approvals shall come from a plan and TIP that fully meet the requirements of this subpart (new TCMs authorized to proceed during a conformity lapse will meet the requirements of this subpart if they are included in an interim plan and program and approved into a SIP with emission reduction benefits); and

(3) MPOs shall participate in the development of motor vehicle emissions budgets, inventories and other transportation related air quality activities undertaken to develop SIPs to the extent required by the Clean Air Act (42 U.S.C. 7504).

(d) In nonattainment or maintenance areas for transportation related pollutants, the MPO shall not approve any transportation plan or program which does not conform with the SIP, as determined in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93).

(e) If more than one MPO has authority in a metropolitan planning area (including multi-State metropolitan planning areas) or in an area which is designated as nonattainment or maintenance for transportation related pollutants, the MPOs and the Governor(s) shall cooperatively establish the boundaries of the metropolitan planning area (addressing the required twenty year planning horizon and relationship to the nonattainment or maintenance areas) and the respective jurisdictional responsibilities of each MPO. The MPOs shall consult with each other and the State(s) to assure that plans and transportation improvement programs are coordinated for the entire metropolitan planning area, including, but not limited to, coordinated data collection, analysis and plan development. Alternatively, a single plan and/or TIP for the entire metropolitan area may be developed jointly by the MPOs in cooperation with their planning partners. Coordination efforts shall be documented in subsequent transmittals of the unified planning work program (UPWP) and various planning products (the plan, TIP, etc.) to the State(s), the FHWA, and the FTA.

(f) The FTA and the FHWA must designate as transportation management areas all UZAs over 200,000 population as determined by the most recent decennial census. The TMAs so designated and those designated subsequently by the FTA and the FHWA (including those designated upon request of the MPO and the Governor) must comply with the special requirements applicable to such areas regarding congestion management systems, project selection, and planning certification. The TMA designation applies to the entire metropolitan planning area boundary. If a metropolitan planning area encompasses a TMA and other UZA(s), the designation applies to the entire metropolitan planning area regardless of the population of constituent UZAs.

(g) In TMAs, the congestion management system shall be developed as part of the metropolitan transportation planning process.

(h) The State shall cooperatively participate in the development of metropolitan transportation plans and metropolitan plans shall be coordinated with the statewide transportation plan. The relationship of the statewide transportation plan and the metropolitan plan is specified in subpart B of this part.

(i) Where a metropolitan planning area includes Federal public lands and/or Indian Tribal lands, the affected Federal agencies and Indian Tribal Governments shall be consulted in the development of transportation plans and programs.

(j) Discretionary grants awarded by the FHWA and the FTA under section 1221 of the TEA–21 (23 U.S.C. 101 note) (Transportation and Community and System Preservation Pilot Program), sections 1118 and 1119 of the TEA–21 (Borders and Corridors) and section 3037 (49 U.S.C. 5309 note) (Access to Jobs) shall be included in the appropriate metropolitan plan and program, except where these funds are utilized for planning and/or research activities. Applicants shall coordinate with the appropriate MPO to ensure that such projects are consistent with the provisions of this subpart. Where planning and research activities are funded under the Transportation and Community and System Preservation Pilot Program or the Borders and Corridors Program, they shall be identified in the Unified Planning Work Program as identified at § 1410.314.

§ 1410.314 Planning tasks and unified work program.

(a) The MPO(s) in cooperation with the State and operators of publicly owned transit shall develop unified planning work programs (UPWPs) that meet the requirements of 23 CFR part 420, subpart A, and:

(1) Discuss the planning priorities facing the metropolitan planning area and describe all metropolitan transportation and transportation-related air quality planning activities

anticipated within the area during the next one or two year period, regardless of funding sources or agencies conducting activities, in sufficient detail to indicate who will perform the work, the schedule for completing it and the products that will be produced; and

(2) Document planning activities to be performed with funds provided under title 23 and Chapter 53 of title 49 U.S.C.

(b) Arrangements may be made with the FHWA and the FTA to combine the UPWP requirements with the work program for other Federal sources of planning funds.

(c) In areas not designated as TMAs and which are in attainment for air quality purposes, the MPO in cooperation with the State and transit operator(s), with the approval of the FHWA and the FTA, may prepare a simplified statement of work, in lieu of a UPWP, that describes who will perform the work and the work that will be accomplished using Federal funds (administered under title 23 U.S.C. and Chapter 53 of title 49 U.S.C. If a simplified statement of work is used, it may be submitted as part of the statewide planning work program, in accordance with 23 CFR part 420.

(d) MPOs, which include non-attainment or maintenance areas, should consult with the US EPA and state/local air agencies in the development of their UPWP regarding appropriate tasks to support attainment of air quality standards.

§ 1410.316 Transportation planning process and plan development.

(a) Each metropolitan planning process shall provide for consideration of projects and strategies that will:

(1) Support the economic vitality of the metropolitan planning area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety and security of the transportation system for motorized and non-motorized users;

(3) Increase the accessibility and mobility options available to people and for freight;

(4) Protect and enhance the environment, promote energy conservation, and improve quality of life;

(5) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(6) Promote efficient system management and operation; and

(7) Emphasize the efficient preservation of the existing transportation system.

(b) In addition, the metropolitan transportation planning process shall develop and adopt a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs. To attain these objectives the process as developed shall meet the requirements and criteria as follows:

(1) Require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised;

(2) Provide timely information about transportation issues and processes (including but not limited to initiation of plan and TIP updates, revisions and/or other modifications and the general structure of the planning process) to citizens, affected public agencies, representatives of transportation agency employees, users of public transit, freight shippers, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs and projects (including but not limited to central city and other local jurisdiction concerns);

(3) Provide reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the Federal-aid highway and transit programs are being considered;

(4) Require adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs (in nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP and major amendment(s));

(5) Demonstrate explicit consideration, recognition and feedback to public input received during the planning and program development processes, including responses to input received from minority, elderly, low-income, and persons with disabilities populations;

(6) Seek out and consider the needs of those traditionally under served by existing transportation systems, including, but not limited to, low-income, the elderly, persons with disabilities and minority populations;

(7) When comments are received on the draft transportation plan or TIP (including the financial plan) as a result of the public involvement process or the interagency consultation process required under the U.S. EPA conformity regulations, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP;

(8) If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available;

(9) Public involvement processes shall be periodically reviewed by the MPO in terms of their effectiveness in assuring that the process provides full and open access to all, with specific attention to the effectiveness of efforts to engage persons with disabilities, minority individuals, the elderly and low income populations;

(10) These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decision making processes;

(11) Metropolitan public involvement processes shall be coordinated with statewide public involvement processes and with project development public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and reduce redundancies and costs.

(c) Transportation plan development and plans shall be consistent with Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and implementing regulations (49 CFR part 21 and 23 CFR part 230); section 162(a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324); the Older Americans Act of 1965, as amended (42 U.S.C. 6101); the Americans With Disabilities Act of 1990 (Public Law 101–336, 104 Stat. 327, as amended) and implementing regulations (49 CFR parts 27, 37, and 38); section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations (49 CFR part 35), which ensure that no person shall, on the grounds of race, color, sex, national origin, age, or physical handicap, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal assistance from the United States Department of Transportation. Consistency shall be demonstrated through:

(1) An assessment covering the entire metropolitan planning area, including at a minimum the following:

(i) A geographic and demographic profile of the metropolitan planning

area that identifies the low-income and minority, and where appropriate, the elderly and persons with disabilities components of this profile,

(ii) The transportation services available to and planned for these segments of the metropolitan planning area's population, and

(iii) Any disproportionately high and adverse environmental impacts, including interrelated social and economic impacts, affecting these populations, consistent with the provisions of Executive Order 12898 as implemented through U.S. DOT Order 5610.2 and FHWA Order 6640.23. Adverse effects can include a denial of or a reduction in benefits;

(2) Consideration of comments received during public involvement efforts (consistent with the provisions of paragraph (b) of this section to ensure that expressed concerns of the elderly, low-income individuals, minority individuals and persons with disabilities, have been addressed during plan and program decision making;

(3) Identification of prior and planned efforts to address any disproportionately high and adverse effects that are found;

(4) The results of paragraphs (c)(1), (2), and (3) of this section will be documented in a manner to permit public review during appropriate project development activities. In accordance with Executive Order 12898, DOT Order 5610.2, and FHWA Order 6640.23, nothing in this subpart is intended to nor shall create any right to judicial review of any action taken by the agencies, their officers or recipients under this subpart to comply with such orders.

(d) The transportation planning process shall identify actions necessary to comply with the Americans With Disabilities Act of 1990, U.S. DOT regulations "Transportation for Individuals With Disabilities" (49 CFR parts 27, 37, and 38) and section 504 of the Rehabilitation Act of 1973 and implementing regulations (49 CFR part 35).

(e) The transportation plan development process shall provide for the involvement of traffic, ridesharing, parking, transportation safety and enforcement agencies; commuter rail operators; airport and port authorities; toll authorities; appropriate private transportation providers and where appropriate city officials; freight shippers; transit users.

(f) The transportation planning process shall provide for the involvement of local, State, and Federal environmental resource and permit agencies as appropriate.

(g) The transportation planning process shall provide for the involvement of Indian Tribal Governments and the Secretary of Interior on a consultation basis for the portions of the plan affecting areas under the jurisdiction of an Indian Tribal Government.

(h) Simplified planning procedures may be proposed in non-TMAs which are in attainment for air quality purposes. The FHWA and the FTA shall review the proposed procedures for consistency with the requirements of this section.

(i) The metropolitan transportation planning process shall include preparation of technical and other reports to assure documentation of the development, refinement, and update of the transportation plan. The reports shall be reasonably available to interested parties, consistent with paragraph (b) of this section.

(j) The metropolitan planning process should provide a forum to coordinate all federally funded non-emergency transportation services within the metropolitan planning area. Where coordination processes are developed within the transportation planning process, at a minimum they should address the planning and delivery of services supporting access to jobs and reverse commute options, relying where feasible on existing processes and procedures.

§ 1410.318 Relation of planning and project development processes.

(a) In order to coordinate and streamline the planning and NEPA processes, the planning process, through the cooperation of the MPO, the State DOT and the transit operator, shall provide the following to the NEPA process:

(1) An identification of an initial statement of purpose and need for transportation investments;

(2) Findings and conclusions regarding purpose and need, identification and evaluation of alternatives studied in planning activities (including but not limited to the relevant design concepts and scope of the proposed action), and identification of the alternative included in the plan;

(3) An identification of the planning documents that provide the basis for paragraphs (a)(1) and (a)(2) of this section; and

(4) Formal expressions of policy support or comment by the planning process participants on paragraphs (a)(1) and (a)(2) of this section.

(b) The following sources of information shall be utilized to satisfy paragraph (a) of this section at a level of detail agreed to by the MPO, the State DOT, and the transit operator:

(1) Inventories of social, economic and environmental resources and conditions;

(2) Analyses of economic, social and environmental consequences;

(3) Evaluation(s) of transportation benefits, other benefits, costs, and consequences, at a geographic scale agreed to by the planning participants, of alternatives, including but not limited to the relevant design concepts and scope of the proposed action;

(4) Data and supporting analyses to facilitate funding related decisions by Federal agencies where appropriate or required, including but not limited to 49 CFR part 611.

(c) The products resulting from paragraphs (a) and (b) of this section shall be reviewed early in the NEPA process in accordance with § 1420.201 to determine their appropriate use.

(d) In order to streamline subsequent project development analyses and studies, and promote better decision making, the FTA and the FHWA strongly encourage all Federal, State, and local agencies with subsequent project level responsibilities for investments included in a transportation plan to do the following:

(1) Participate in planning analyses and studies to the extent possible;

(2) Provide early identification of key concerns for later consideration and analysis as needed; and

(3) Utilize the sources of information identified in paragraph (b) of this section.

(e) The analyses conducted under paragraph (b)(3) of this section may serve as the alternatives analysis required by 49 U.S.C. 5309(e) for new fixed guideway transit systems and extensions and the information required under 49 CFR part 611 shall be generated.

(f) Any decision by the Secretary concerning a transportation plan or transportation improvement program developed in accordance with this part shall not be considered to be a Federal action subject to review under NEPA (42 U.S.C. 4321 *et seq.*). At the discretion of the MPO, in cooperation with the State DOT and the transit operator, an environmental analysis may be conducted on a transportation plan.

(g) The FHWA and the FTA project level actions, including but not limited to issuance of a categorical exclusion, finding of no significant impact or final environmental impact statement under 23 CFR part 1420, approval of right of way acquisition, interstate interchange approvals, approvals of HOV

conversions, funding of ITS projects, final design and construction, and transit vehicle acquisition, may not be completed unless the proposed project is included in a plan and the phase of the project for which Federal action is sought is included in the metropolitan TIP. None of these project-level actions can occur in nonattainment and maintenance areas unless the project conforms according to the requirements of the US EPA conformity regulation (40 CFR parts 51 and 93).

§ 1410.320 Congestion management system and planning process.

(a) In TMAs designated as nonattainment for ozone or carbon monoxide, Federal funds may not be programmed for any project that will result in a significant increase in carrying capacity for single occupant vehicles (a new general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks) unless the project results from a congestion management system (CMS) meeting the requirements of 23 CFR part 500. Such projects shall incorporate all reasonably available strategies to manage the single occupant vehicle (SOV) facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies, as appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall be committed to by the State and the MPO for implementation in a timely manner, but no later than the completion date for the SOV project.

(b) In TMAs, the planning process must include the development of a CMS that provides for effective management of new and existing transportation facilities through the use of travel demand reduction and operational management.

(c) The effectiveness of the congestion management system in enhancing transportation investment decisions and improving the overall efficiency of the metropolitan area's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan planning process.

§ 1410.322 Transportation plan content.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing at least a twenty year planning horizon. The plan shall include both long-range and short-range strategies/actions, including, but not limited to, operations and management activities, that lead to the systematic development of an integrated intermodal transportation system that facilitates the safe and efficient movement of people and goods in addressing current and future transportation demand. The transportation plan shall be reviewed and updated every five years in attainment areas and at least triennially in nonattainment and maintenance areas to confirm its validity and its consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period. The transportation plan must be approved by the MPO. Update processes shall include a mechanism for ensuring that the MPO, the State DOT and the transit operator agree that the data utilized in preparing other existing modal plans providing input to the transportation plan are valid and benchmarked in relation to each other and the transportation plan. In updating a plan, the MPO shall base the update on the latest estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. Reaffirmation or revisions of metropolitan plan contents and supporting analyses produced by an update review require approval by the MPO.

(b) In addition, the plan shall, consistent with the following:

(1) Identify the projected transportation demand of persons and goods in the metropolitan planning area over the period of the plan;

(2) Identify adopted management and operations strategies (*e.g.*, traveler information, traffic surveillance and control, incident and emergency response, freight routing, reconstruction and work zones management, weather response, pricing, fare payment alternatives, public transportation management, demand management, alternative routing, telecommuting, parking management, and intermodal connectivity) that address the need for improved system performance and the delivery of transportation services to customers under varying conditions;

(3) Identify pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(4) Reflect the consideration given to the results of the congestion management system, including in TMAs that are nonattainment areas for carbon monoxide and ozone, identification of SOV projects that result from a congestion management system that meets the requirements of 23 CFR part 500;

(5) Assess capital investment and other measures necessary to preserve the existing transportation system (including requirements for operational improvements, resurfacing, restoration, and rehabilitation of existing and future major roadways, as well as operations, maintenance, modernization, and rehabilitation of existing and future transit facilities) and make the most efficient use of existing transportation facilities to relieve vehicular congestion and enhance the mobility of people and goods;

(6) Include design concept and scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of the source of funding, in nonattainment and maintenance areas to permit conformity determinations under the U.S. EPA conformity regulations at 40 CFR parts 51 and 93. In all areas, all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) Reflect a multimodal evaluation of the transportation, socioeconomic, environmental, and financial impact of the overall plan;

(8) Reflect, to the extent that they exist, consideration of: Comprehensive long-range land use plan(s) and development objectives; State and local housing goals and strategies, community development and employment plans and strategies, and environmental resource plans; linking low income households with employment opportunities as reflected in work force training and labor mobility plans and strategies; energy conservation goals; and the metropolitan area's overall social, economic, and environmental goals and objectives;

(9) Indicate, as appropriate, proposed transportation enhancement activities as defined in 23 U.S.C. 101(a); and

(10) Include a financial plan that demonstrates the consistency of proposed transportation investments (including illustrative projects where identified in the financial plan) with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. Financial estimates utilized in preparing transportation plans (and TIPs) shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). The estimated revenue by existing revenue source (local, State, Federal and private) available for transportation projects

shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, management, and maintenance costs. All cost and revenue projections shall be based on the data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

(11) Include an ITS integration strategy for the purposes of guiding and coordinating the management and funding of ITS investments supported with highway trust fund dollars to achieve an integrated regional system. The scope of the integration strategy shall be appropriate to the scale of investment anticipated for ITS during the life of the plan and shall address the resource commitments and staging of planned investments. Provision shall be made to include participation from the following agencies, at a minimum, in the development of the integration strategy: Highway and public safety agencies; appropriate Federal lands agencies; State motor carrier agencies as appropriate; and other operating agencies necessary to fully address regional ITS integration. In determining how ITS investments will meet metropolitan goals and objectives, the integration strategy shall clearly assess existing and future ITS systems, including their functions and electronic information sharing expectations. Unique regional ITS initiatives (a program of related projects) that are multi-jurisdictional and/or multi-modal, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability shall be identified. Documentation within the plan shall reflect the scale of investment and the needs and size of the metropolitan area.

(c) There must be adequate opportunity for public official (including elected officials) and citizen involvement in the development of the transportation plan before it is approved by the MPO, in accordance with the requirements of § 1410.316(b). Such procedures shall include opportunities for interested parties (including citizens, affected public agencies, representatives of transportation agency employees, freight shippers, representatives of users of public transit, providers of freight transportation services, and private providers of transportation) to be involved in the early stages of the plan development/update process. The procedures shall include publication of the proposed plan or other methods to make it readily available for public review and comment and, in nonattainment TMAs, an opportunity for at least one formal public meeting annually to review planning assumptions and the plan development process with interested parties and the general public. The procedures also shall include publication of the approved plan or other methods to make it readily available for information purposes.

(d) In nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new/revised plan in accordance with the Clean Air Act and the EPA conformity regulations (40 CFR parts 51 and 93). If a conformity determination cannot be accomplished by either the MPO and or the FHWA and the FTA, the results will be communicated to the Governor or the Governor's designee and the public transit operator with an explanation of the potential consequences.

(e) The FHWA and the FTA do not approve transportation plans. However, Federal actions and approvals, including, but not limited to, conformity determinations, planning findings (pursuant to § 1410.322(b)), STIP approvals, completion of the NEPA process, grant agreements, and project authorizations, are based on a transportation plan with a horizon of at least twenty years on the effective date of the plan. Plans that remain substantially unchanged (i.e., regionally significant projects in attainment areas and non-exempt projects in nonattainment and maintenance areas have not been added) after adoption may serve as the basis for subsequent Federal actions until such time as the next update. In attainment areas the effective date of the plan shall be its date of adoption by the MPO. In nonattainment and maintenance areas, the effective date shall be the date of a conformity determination by the FHWA and the FTA.

(f) Although transportation plans do not need to be approved by the FHWA or the FTA, copies of any new/revised plans must be provided to each agency.

(g) During a conformity lapse metropolitan areas can prepare an interim plan as a basis for advancing projects that are eligible to proceed under a conformity lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

§ 1410.324 Transportation improvement program content.

(a) The metropolitan transportation planning process shall include development of a transportation improvement program (TIP) for the metropolitan planning area by the MPO in cooperation with the State and public transit operators.

(b) The TIP must be updated at least every two years and approved by the MPO and the Governor. The frequency and cycle for updating the TIP must be compatible with the STIP development and approval process. Since the TIP becomes part of the STIP, the TIP lapses when the FHWA and the FTA approval for the STIP lapses. In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the STIP in accordance with § 1410.222(c). TIP extensions shall not be granted in nonattainment or maintenance areas. Although metropolitan TIPs are not approved individually by the FHWA or the FTA, they are approved as part of the STIP approval action by the FTA and the FHWA. Copies of any new or amended TIPs must be provided to each agency. Additionally, in nonattainment and maintenance areas for transportation related pollutants, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any new or amended TIPs (unless the new amended TIP consists entirely of exempt projects) in accordance with the Clean Air Act requirements and the EPA conformity regulations (40 CFR parts 51 and 93).

(c) There must be reasonable opportunity for public comment in accordance with the requirements of § 1410.316(b) and, in nonattainment TMAs, an opportunity for at least one formal public meeting during the TIP development process. This public meeting may be combined with the public meeting required under § 1410.322(c). The proposed TIP shall be published or otherwise made readily available for review and comment. Similarly, the approved TIP shall be published or otherwise made readily available for information purposes.

(d) The TIP shall cover a period of not less than three years, but may cover a longer period if it identifies priorities and financial information for the additional years. The TIP must include a priority list of projects to be advanced in the first three years. As a minimum,

the priority list shall group the projects that are to be undertaken in each of the years, i.e., year one, year two, year three. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the U.S. EPA conformity regulation (40 CFR parts 51 and 93) and shall provide for their timely implementation.

(e) The TIP shall be financially constrained by year and include a financial plan that demonstrates which projects can be implemented using current revenue sources and which projects are to be implemented using proposed revenue sources (while the existing transportation system is being adequately operated and maintained). The financial plan shall be developed by the MPO in cooperation with the State and the transit operator. Financial estimates utilized in preparing TIPs shall be developed through procedures cooperatively established and mutually agreed to by the MPO, the State DOT and the transit operator(s). It is expected that the State would develop this information as part of the STIP development process and that the estimates would be refined through this process. Only projects for which construction and operating funds can reasonably be expected to be available (and illustrative projects) may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23, U.S.C., 49 U.S.C. Chapter 53, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included for the first two years of the current TIP shall be limited to those for which funds are available or committed.

(f) The TIP shall include:

(1) All transportation projects, or identified phases of a project, (including pedestrian walkways, safety, bicycle transportation facilities and transportation enhancement projects) within the metropolitan planning area proposed for funding under title 23, U.S.C., and Federal Lands Highway projects. Title 49, U.S.C., Emergency relief projects (except those involving substantial functional, locational or capacity changes) and planning and research activities (except those funded with NHS, STP, and/or Minimum Guarantee funds) are exempt from this requirement. Planning and research activities funded with NHS, STP and/or Minimum Guarantee funds may be excluded from the TIP by agreement of the State and the MPO;

(2) Only projects that are consistent with the transportation plan;

(3) All regionally significant transportation projects for which an FHWA or FTA action is required whether or not the projects are to be funded with title 23, U.S.C., or title 49, U.S.C., funds, e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, demonstration projects not funded under titles 23 and 49, U.S.C., etc.;

(4) Any FTA or FHWA funded or approved projects submitted to EPA for consideration as a SIP TCM;

(5) For air quality analysis in nonattainment and maintenance areas and informational purposes in other areas, all regionally significant transportation projects proposed to be funded with Federal funds, including intermodal facilities, not covered in paragraphs (f)(1) or (f)(3) of this section; and

(6) For air quality analysis in nonattainment and maintenance areas and informational purposes in other areas, all regionally significant projects to be funded with non-Federal funds.

(g) With respect to each project or project phase under paragraph (f) of this section the TIP shall include:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, length, etc.) to identify the project or phase;

(2) Estimated total project cost (which may extend beyond the three years of the TIP);

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase of the project;

(4) Proposed category and source of Federal and non-Federal funds;

(5) Identification of the recipient/subrecipient and State and local agencies responsible for carrying out the project or phase of the project;

(6) In nonattainment and maintenance areas, identification of those projects or phases of projects which are identified as TCMs in the applicable SIP or are new TCMs with emissions benefits being submitted for SIP approval during a conformity lapse; and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects or phases of projects which will implement the plans.

(h) In nonattainment and maintenance areas, projects included shall be specified in sufficient detail (design concept and scope) to permit air quality analysis in accordance with the U.S. EPA conformity requirements (40 CFR parts 51 and 93).

(i) Projects proposed for FHWA and/or FTA funding that are not considered by the State and the MPO to be of appropriate scale for individual identification in a given program year may be grouped by function, geographic area, and work type using applicable classifications under 23 CFR 1420.117 (c) and (d). In nonattainment and maintenance areas, classifications must be consistent with the exempt project classifications contained in the U.S. EPA conformity requirements (40 CFR parts 51 and 93). In addition, projects funded under Chapter 2 of 23 U.S.C. may be grouped by funding category and shown as one line unless they are determined to be regionally significant.

(j) Projects utilizing Federal funds that have been allocated to the area pursuant to 23 U.S.C. 133(d)(3)(E) shall be identified.

(k) The total Federal share of projects included in the TIP proposed for funding under 49 U.S.C. 5307 may not exceed formula backed apportioned funding levels available to the area for the program year.

(l) Procedures or agreements that distribute suballocated Surface Transportation Program or urbanized area formula (49 U.S.C. 5307) funds to individual jurisdictions or modes within the metropolitan area by predetermined percentages or formulas are inconsistent with the legislative provisions that require MPOs in cooperation with the State and transit operators to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the planning process.

(m) For the purpose of including transit projects funded through Capital Investment Grants or Loans (49 U.S.C. 5309) in a TIP, the following approach shall be followed:

(1) The total Federal share of projects included in the first year of the TIP shall not exceed levels of funding committed to the area; and

(2) The total Federal share of projects included in the second, third and/or subsequent years of the TIP may not exceed levels of funding committed, apportioned, appropriated (including carryover and unobligated balances reasonably expected to be available, to the area.

(n) As a management tool for monitoring progress in implementing the transportation plan, the TIP shall:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including intermodal trade-offs) for inclusion in

the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects;

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, including the reasons for any significant delays in the planned implementation and strategies for ensuring their advancement at the earliest possible time; and

(4) In nonattainment and maintenance areas, include a list of all projects found to conform in a previous TIP. Projects shall be included in this list until construction has been fully authorized.

(5) Serve as a basis for an annual listing of projects for which Federal funds have been obligated, supplemented as appropriate to ensure annual public access to information on the obligation of funds.

(o) In order to maintain or establish operations, in the absence of an approved metropolitan TIP, the FTA and/or the FHWA Administrators, as appropriate, may approve operating assistance.

(p) During a conformity lapses metropolitan areas may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a lapse (as defined in 40 CFR parts 51 and 93). In areas which expect to return to conformity earlier than six months, the emphasis should be on reestablishing conformity, rather than embarking on developing an interim plan and TIP.

§ 1410.326 Transportation improvement program modification.

The TIP may be modified at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation related pollutants, if the TIP is modified by adding or deleting non-exempt projects or is replaced with a new TIP, a new conformity determinations by the MPO and the FHWA and the FTA shall be made. Public involvement procedures consistent with § 1410.316(b) shall be utilized in modifying the TIP, except that these procedures are not required for TIP modifications that only involve projects of the type covered in § 1410.324(i).

§ 1410.328 Metropolitan transportation improvement program relationship in statewide TIP.

(a) After approval by the MPO and the Governor, the TIP shall be included without modification, directly or by reference, in the STIP program required under 23 U.S.C. 135 and consistent with § 1410.220, except that in nonattainment and maintenance areas, a conformity finding by the FHWA and the FTA must be made before it is included in the STIP. After approval by the MPO and the Governor, a copy shall be provided to the FHWA and the FTA.

(b) The State shall notify the appropriate MPO and Federal Lands Highways Program agencies, *e.g.*, Bureau of Indian Affairs and/or National Park Service, when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 1410.330 Transportation improvement program action by FHWA/FTA.

(a) The FHWA and the FTA must jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing, comprehensive transportation process carried on cooperatively by the States, the MPOs and the transit operators in accordance with the provisions of 23 U.S.C. 134 and 49 U.S.C. 5307 and 5313(b). This finding shall be based on the self-certification statement submitted by the State and MPO under § 1410.334, a review of the metropolitan transportation plan and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the FHWA and the FTA must also jointly determine, in accordance with 40 CFR parts 51 and 93, that the metropolitan TIP conforms with the applicable SIP and that priority has been given to the timely implementation of transportation control measures contained in the applicable SIP. As part of their review in nonattainment and maintenance areas requiring TCMs, the FHWA and the FTA will specifically consider any comments relating to the financial plans for the plan and TIP contained in the summary of significant comments required under § 1410.316(b). If the TIP is determined to be in nonconformance with the SIP, the FHWA and FTA shall return the TIP to the Governor and the MPO with an explanation of the joint determination and an explanation of potential consequences. If the TIP is found to conform with the SIP, the Governor and MPO shall be notified of the joint finding. After the FHWA and the FTA find the TIP to be in conformance, the TIP shall be incorporated, without modification, into the STIP, directly or by reference.

(c) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the fiscally constrained and conforming plan and TIP. The MPOs are not required to include illustrative projects in future TIPs.

§ 1410.332 Selecting projects from a TIP.

(a) Once a TIP that meets the requirements of § 1410.324 has been developed and approved, the first year of the TIP shall constitute an "agreed to" list of projects for project selection purposes and no further project selection action is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts. In this case, a revised "agreed to" list of projects shall be jointly developed by the MPO, the State, and the transit operator if requested by the MPO, the State, or the transit operator. If the State or transit operator wishes to proceed with a project in the second or third year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the transit operator jointly develop expedited project selection procedures to provide for the advancement of projects from the second or third year of the TIP.

(b) In areas not designated as TMAs and when § 1410.332(c) does not apply, projects to be implemented using title 23 funds other than Federal lands projects or title 49 funds shall be selected by the State and/or the transit operator, in cooperation with the MPO from the approved metropolitan TIP Federal Lands Highway Program projects shall be selected in accordance with 23 U.S.C. 204.

(c) In areas designated as TMAs where § 1410.332(c) does not apply, all title 23 and title 49 funded projects, except projects on the NHS and projects funded under the bridge, and Federal Lands Highways programs, shall be selected by the MPO in consultation with the State and transit operator from the approved metropolitan TIP and in accordance with the priorities in the approved metropolitan TIP. Projects on the NHS and projects funded under the bridge program shall be selected by the State in cooperation with the MPO, from the approved metropolitan TIP. Federal Lands Highway Program projects shall

be selected in accordance with 23 U.S.C. 204.

(d) Projects not included in the federally approved STIP shall not be eligible for funding with title 23 or title 49, U.S.C., funds.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the U.S. EPA conformity regulations at 40 CFR parts 51 and 93.

§ 1410.334 Federal certifications.

(a) The State and the MPO shall annually self-certify to the FHWA and the FTA that the planning process is addressing the major issues facing the area and is being conducted in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 49 U.S.C. 5303–5306;

(2) Sections 174 and 176 (c) and (d) of the Clean Air Act (42 U.S.C. 7504, 7506 (c) and (d));

(3) Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794;

(4) Section 1003(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240, 105 stat. 1914) regarding the involvement of disadvantaged business enterprises in the FHWA and the FTA funded planning projects (sec. 105(f), Public Law 97–424, 96 Stat. 2100; 49 CFR part 23);

(5) Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and U.S. DOT regulations "Transportation for Individuals with Disabilities" (49 CFR parts 27, 37, and 38);

(6) Older Americans Act, as amended (42 U.S.C. 6101); and

(7) The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities.

(8) All other applicable provisions of Federal law.

(b) The FHWA and the FTA jointly will review and evaluate the transportation planning process for each TMA (as appropriate but no less than once every three years) to determine if the process meets the requirements of this subpart.

(c) In TMAs that are nonattainment or maintenance areas for transportation related pollutants, the FHWA and the FTA will also review and evaluate the transportation planning process to assure that the MPO has an adequate process to ensure conformity of plans and programs in accordance with procedures in 40 CFR parts 51 and 93.

(d) Upon the review and evaluation conducted under paragraphs (b) and (c) of this section, the FHWA and the FTA shall take one of the following actions, as indicated:

(1) Where the process meets the requirements of this part, jointly certify the transportation planning process;

(2) Where the process substantially meets the requirements of this part, jointly certify the transportation planning process subject to certain specified corrective actions being taken; or

(3) Where the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the Administrators may jointly determine and subject to certain specified corrective actions being taken.

(e) A certification action under this section will remain in effect for three years unless a new certification determination is made sooner or a shorter term is specified in the certification report.

(f) If, upon the review and evaluation conducted under paragraph (b) or (c) of this section, the FHWA and the FTA jointly determine that the transportation planning process in a TMA does not substantially meet the requirements, they may take the following action as appropriate:

(1) Withhold up to twenty percent of the apportionment attributed to the relevant metropolitan planning area under 23 U.S.C. 133(d)(3), capital funds apportioned under 49 U.S.C. 5307–5309; or

(2) Withhold approval of all or certain categories of projects.

(g) In conducting a certification review, the FHWA and the FTA shall make provision, relying on the local public involvement processes and supplemented with other involvement strategies as appropriate, to engage the public in the review process. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(h) The State and the MPO shall be notified of the actions taken under paragraph (f) of this section. Upon full, joint certification by the FHWA and the FTA, all funds withheld will be restored to the metropolitan area, unless the funds have lapsed.

Federal Transit Administration

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration proposes to amend Chapter VI of title 49, Code of Federal Regulations, as follows:

PART 613—[REMOVED]

3. Remove part 613.

4. Add part 621 to read as follows:

PART 621—METROPOLITAN AND STATEWIDE PLANNING

Subpart A—Planning

Sec.

621.100 Definitions.

Subpart B—Statewide Transportation Planning and programming

621.200 Statewide transportation planning and programming.

Subpart C—Metropolitan Transportation Planning and Programming

621.300 Metropolitan transportation planning and programming.

Authority: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303–5309; 49 CFR .151.

Subpart A—Planning

§ 621.100 Definitions.

The regulations in 23 CFR 1410, subpart A, shall be followed in complying with the requirements of this subpart.

Subpart B—Statewide Transportation Planning and programming

§ 621.200 Statewide transportation planning and programming.

The regulations in 23 CFR 1410 subpart B, shall be followed in complying with the requirements of this subpart.

Subpart C—Metropolitan Transportation Planning and Programming

§ 621.300 Metropolitan transportation planning and programming

The regulations in 23 CFR part 1410, subpart C, shall be followed in complying with the requirements of this subpart.

Issued on: May 18, 2000.

Vincent F. Schimmoller,

Acting Executive Director, Federal Highway Administration.

Nuria I. Fernandez,

Acting Administrator, Federal Transit Administration.

[FR Doc. 00–13021 Filed 5–19–00; 1:15 pm]

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Federal Register

Thursday,
May 25, 2000

Part IV

Department of Transportation

Federal Aviation Administration
Federal Transit Administration

23 CFR Parts 771, 1420 and 1430

49 CFR Parts 622 and 623

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 771, 1420, and 1430

Federal Transit Administration

23 CFR Parts 1420 and 1430

49 CFR Parts 622 and 623

[FHWA Docket No. FHWA–99–5989]

FHWA RIN 2125–AE64; FTA RIN 2132–AA43

NEPA and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA and the FTA are issuing this notice of proposed rulemaking to update and revise their National Environmental Policy Act of 1969 (NEPA) implementing regulation for projects funded or approved by the FHWA and the FTA. The current regulation was issued in 1987 and experience since that time as well as changes in legislation, most recently by the Transportation Equity Act for the 21st Century (TEA–21), call for an updated approach to implementation of NEPA for FHWA and FTA projects and actions. Under this proposed rulemaking, the FHWA/FTA regulation for implementing NEPA would be redesignated and revised to further emphasize using the NEPA process to facilitate effective and timely decisionmaking.

This NPRM is being issued concurrently with another notice of proposed rulemaking on metropolitan and statewide transportation planning. This coordinated approach to rulemaking will further the goal of the FTA and the FHWA to better coordinate the results of the planning processes with project development activities and decisions associated with the NEPA process.

DATES: Comments must be received on or before August 23, 2000. For dates of public information meetings see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Submit written, signed comments to the docket number appearing at the top of this document. You must submit your comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To receive notification of receipt of comments you must include a pre-addressed, stamped envelope or postcard. For addresses of public information meetings see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For the FHWA: Mr. Fred Skaer, (202) 366–2058, Office of Planning and Environment, HEPE, or Mr. L. Harold Aikens, (202) 366–0791, Office of the Chief Counsel, HCC–31. For the FTA: Mr. Joseph Ossi, (202) 366–0096, Office of Planning, TPL–22, or Mr. Scott Biehl, (202) 366–0952, Office of the Chief Counsel, TCC–30. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL401, by using the universal resource locator (URL):*http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Contents of Preamble

Public Information Meetings

We will hold a series of seven public briefings within the comment period for the NPRM. The purposes of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, the companion NPRM on the metropolitan and statewide planning process and the NPRM on Intelligent Transportation Systems Architecture consistency. The meetings will be scheduled from approximately 8 a.m. to 5 p.m. at the locations listed below. Changes in the information below will be made available after the publication of this NPRM through the FHWA and the FTA websites, other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information but without access to these sources may contact the individuals listed above.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRM. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street, NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30 , 2000; Dallas, TX, Hyatt Regency Hotel Dallas, 300 Reunion Boulevard, July 11, 2000; and, San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1 to 4 p.m., e.t., through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Ms. Katie McDermott at *kpm@unity.ncsu.edu* or (919) 515–8034. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, NEPA implementation, and Intelligent Transportation Systems (ITS) rules.

An overview of each of the three notices of proposed rulemakings (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of FHWA/FTA proposals. By sponsoring this teleconference it is

hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Background

The FHWA and the FTA propose to update and revise the current regulation and guidance implementing the NEPA (42 U.S.C. 4321 *et seq.*) for transportation projects using Federal funds or requiring Federal approval.

In this notice of proposed rulemaking, we are clearly communicating that our NEPA responsibilities include an affirmative duty to facilitate the development of transportation proposals which represent responsible stewardship of community and natural environmental resources. In the 13 years since the NEPA regulation was last issued, the nature of the highway and transit programs has evolved to reflect our country's changing transportation needs and the impact that the transportation network can have on a complex set of environmental, community, and economic considerations. What has not changed is the role of State and local officials and Federal land management agency decision makers to define transportation investment strategies, plan for a future transportation system that best reflects their community needs, and select and set priorities for transportation projects.

The NPRM was developed by an interagency Task Force of the FHWA and the FTA with input from other DOT modal agencies, the U.S. Environmental Protection Agency (EPA), other Federal agencies and the Office of the Secretary, U.S. DOT. The Task Force reviewed all input received from the outreach process which is described below and through other sources that communicate regularly with U.S. DOT. In addition, input was provided from the field staff of the FHWA and the FTA.

Over the past thirteen years we have developed an increased understanding of effective environmental analysis, a greater commitment to prevention of adverse environmental impacts, and a realization of the increased value of integrated agency and public coordination. Given these developments, our role to ensure that transportation projects are developed through a more effective and collaborative NEPA process at the State, local, and Federal levels becomes that much more pivotal. Our environmental rule reflects the understanding that NEPA is an important tool for helping make transportation decisions, rather than justifying decisions already made. In addition, we believe that a more coordinated approach to planning and project development (the NEPA process plus additional project level actions needed to prepare for project implementation) will contribute to more effective and environmentally sound decisions regarding investment choices and trade-offs.

By including the environmental streamlining provision in TEA–21, section 1309 of Public Law 105–178, 112 Stat. 108 at 232, the Congress intended that transportation planning and environmental considerations be better coordinated and that project delivery schedules be improved through a process that is efficient, comprehensive, and streamlined. Growing awareness of the need for a Federal role that would oversee development of a coordinated environmental review process is tempered with congressional intent that State and local decisions be respected. The most important Federal role in the transportation decisionmaking process is one where the FHWA and the FTA would facilitate other Federal agencies' early involvement and participation in NEPA activities so that redundant processes are identified and avoided. We will, in our role as lead agencies, highlight opportunities to use NEPA as a mechanism to address statutory responsibilities at Federal, State, and local levels of government. During the TEA–21 outreach process, there has been very strong support from our transportation and environmental partners for a better managed NEPA process which reflects these basic features: coordination, flexibility, and efficiency.

For these reasons, it is clear that a fundamentally new approach to NEPA is needed, one that emphasizes strong environmental policy, collaborative program solving approaches involving all levels of government and the public early in the process, and integrated and streamlined coordination and decisionmaking processes. Proposed approaches are included in this notice of proposed rulemaking. This NPRM fully supports "protection and enhancement of communities and the natural environment," one of five U.S. DOT strategic goals. Translating this strategic direction into day-to-day operations requires that appropriate changes be made to regulations and nonregulatory operating guidance.

Overall Strategy for Regulatory Development

Our strategy for regulatory development has three principal elements: (1) Outreach and listening to stakeholders; (2) developing improvements that will allow the FHWA, the FTA, States and metropolitan areas to demonstrate measurable progress toward achieving congressional intent and objectives; and (3) seeking ways to improve coordination and performance, both internally and with our Federal partner agencies.

Input to Development of Notice of Proposed Rulemaking

We have used several venues to obtain feedback on how to improve the administration of NEPA. Of principal importance was the NEPA 25th Anniversary Workshop held in Chattanooga, Tennessee in 1995. Participants included a diverse group of governmental and nongovernmental individuals representing transportation and community interests, as well as those interested in protecting the natural environment. The blueprint document that resulted from the NEPA Workshop underscores the need for a fundamentally new approach to NEPA, one that focuses on decisionmaking rather than compliance.

The FHWA and the FTA, in concert with the Office of the Secretary and other modal administrations within the U.S. DOT, developed and implemented an extensive public outreach process on all elements of the TEA–21. The process began shortly after the legislation was enacted on June 9, 1998, and various types of outreach activities have been underway since that time. The initial six-month Departmentwide outreach process included twelve regional forums and over 50 focus groups and workshops (63 FR 40330, July 28, 1998). The U.S. DOT heard from over 3,000 people including members of Congress, Governors and Mayors, other elected officials, transportation practitioners at all levels, community activists and environmentalists, freight shippers and suppliers, and other interested individuals. The input received was valuable and has helped us shape implementation strategy, guidance, and regulations.

With respect to the planning and environmental provisions of TEA–21, we learned a great deal through the twelve regional forums and focus group sessions and subsequently implemented a second, more focused phase of outreach which included issuing a discussion paper, "TEA–21 Planning and Environmental Provisions: Options for Discussion," FHWA/FTA, February 1999. The content of the Options Paper reflected input received up to that time and built upon the existing statewide

and metropolitan planning regulations and our NEPA implementing regulation. We released the Options Paper on February 9, 1999, and received comments through April 30, 1999. More than 150 different sets of comments were received from State Departments of Transportation (DOTs), Metropolitan Planning Organizations (MPOs), counties, regional planning commissions, other Federal agencies, transit agencies, bicycle advocacy groups, engineering organizations, consultants, historical commissions, environmental groups, and customers—the American public. These comments were all reviewed and taken into consideration in the development of this NPRM. Another element of outreach has included meetings with our key stakeholder groups, other Federal agencies, and the regional and field staff within our agencies.

This proposed rule will be one part of a widespread agency effort to provide clear and consistent guidance on how the NEPA process can be most effectively used to help applicants make transportation decisions which reflect a concern for social, economic, and environmental well-being. It provides the framework upon which we, along with State DOTs, MPOs, transit agencies, and Federal land management agencies, can base our approach to transportation decisionmaking.

We recognize that a wide range of issues exist in the realm of transportation and the environment. Our outreach effort associated with TEA–21, as well as feedback to the Options Paper, have highlighted many areas of concern for which the FHWA and the FTA policy should be more clearly articulated. However, not all of these areas will be directly addressed as part of this rule. For many topics for which we feel regulatory treatment is unnecessary or inappropriate, we intend to issue a comprehensive package of materials to provide detailed, nonregulatory information on how to incorporate such considerations into the NEPA process. In addition, certain other topics will be the subject of individual, separate regulations or guidance.

The comprehensive package of informational materials is envisioned as a replacement both for the 1987 FHWA Technical Advisory 6640.8a on environmental documents and the FTA (formerly Urban Mass Transportation Administration) Circular 5620.1 [1] on environmental assessments. The timing of its development is intended to be consistent with the development of the regulations that will result from this NPRM. We anticipate that the comments we receive on the NPRM will help guide the creation of the informational materials, as well as the regulations. Thus, a more complete picture of our approach will be presented.

Further, we have been working with Federal environmental agencies to implement the environmental streamlining provisions of TEA–21. The results of those activities are described in the section-by-section analysis discussion later in this preamble.

The TEA–21 outreach effort and comments on the Options Paper have all helped guide us in developing this notice of proposed rulemaking. Comments on this NPRM are welcomed and will be taken into account prior to the issuance of a final regulation containing updated NEPA implementation requirements.

Relationship to U.S. DOT's Statewide and Metropolitan Planning Regulation and Other Rulemaking Efforts

There are four additional rulemaking activities either underway or planned which relate closely to this notice of proposed rulemaking. These include: the joint FHWA/FTA rules on statewide and metropolitan planning and on section 4(f), and the FHWA rules on acquisition of right-of-way and design-build contracting. The relationship with the statewide and metropolitan planning rulemaking is described below, and the TEA–21 provisions and input received through the Options Paper on the other three issue areas follows:

Statewide and Metropolitan Planning

Concurrent with the release of this notice of proposed rulemaking, the U.S. DOT is issuing a notice of proposed rulemaking to update and revise its statewide and metropolitan planning regulations (23 CFR part 450 and 49 CFR part 613). As proposed in these coordinated rulemaking actions, the statewide and metropolitan planning rule and the NEPA and transportation decisionmaking rules would both be moved to new parts: 1410 and 1420, respectively. This co-location is intended to underscore the integrated nature of transportation planning and the NEPA process.

We intend to ensure that the regulatory provisions governing statewide and metropolitan planning and NEPA work in a consistent and complementary fashion, and result in sound transportation decisions. We view the changes in TEA–21 as opportunities to improve and integrate planning and environmental processes to support more effective decisionmaking and it is in this context that both notices of proposed rulemaking were developed. It is our intent to establish consistency between the two regulations to allow our State and local transportation partners that choose to conduct social, economic, and environmental analysis at the planning stage to incorporate that analysis at the project development phase. This approach offers options for integrating project development efficiencies into the overall planning process, where States, MPOs, and transit agencies deem such action appropriate and desirable.

Section 4(f) (49 U.S.C. 303)

We propose to move the reference and citation for section 4(f) [2] in title 23 of the Code of Federal Regulations. This proposal removes the provisions on section 4(f) from the NEPA rule and establishes a separate regulation for section 4(f). Years of applying section 4(f) to new and unprecedented situations have led to a history of case experience which must be reflected in the regulation. As a result, the rules governing section 4(f) have grown to the point that they warrant their own part in the regulations. We can envision a separate effort to revise and update the section 4(f) rule; however, we are proposing minor changes at this time. Nevertheless, we invite comment on suggested changes to the Section 4(f) rule of a more substantive nature. A comprehensive package of informational materials that will be released concurrent with this final regulation will elaborate on the continued fully integrated relationship between the NEPA process and the section 4(f) evaluation process.

The information within the proposed section 4(f) regulation has not changed in concept. However, new information has been added to bring the administration of section 4(f) evaluations up-to-date with FHWA and FTA programs such as Transportation Enhancements, Transit Enhancements, the Symms National Trail Program, etc. There has been little substantive change in the requirements of the section 4(f) regulation; rather the format of the information presented has been changed

[1] The FHWA and the FTA internal directives are available for inspection and copying as prescribed at 49 CFR part 7.

[2] Section 4(f) of the Department of Transportation Act, which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified without substantive change, as 49 U.S.C. 303. This regulation continues to refer to section 4(f) because it would create needless confusion to do otherwise; the policies section 4(f) engendered are widely referred to as "section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

to reflect these program changes and proposed organizational changes.

The separation of the section 4(f) and NEPA procedures into separate regulations is not intended to fragment compliance with section 4(f) and NEPA. Our intent is to continue a fully integrated implementation under the unified and coordinated process provided by the NEPA procedures as an umbrella for addressing all relevant responsibilities, including section 4(f). Placing the two regulations in sequence within the Code of Federal Regulations, with cross references between them, is intended to communicate the continued integration of section 4(f) and the NEPA process.

Right-of-Way Acquisition

Section 1301 of the TEA–21 allows the value of land acquired by a State or local government without Federal assistance to be credited to the State share of a federally-assisted project which uses that land. However, the law stipulated that the land acquisition must not influence the environmental assessment of the project, including the need to construct the project, the consideration of alternatives, and the selection of a specific location.

The FHWA considered, under a separate rulemaking, covering "Right-of-Way Program Administration" published as a final rule in the December 21, 1999, **Federal Register**, an "early acquisition" policy to accommodate the acquisition of land or other property interests (including "at-risk" activities) by State or local agencies that may be deemed necessary while NEPA considerations are being concluded. These acquisitions would be considered "at-risk" in that the Federal reimbursement for a share of the acquisition costs would be forthcoming only if the acquired property is subsequently used in a federally-assisted project. Interested parties should refer to the December 21, 1999, final rulemaking (64 FR 71284–71297) in the **Federal Register**.

Advance right-of-way acquisition was the subject of considerable debate during the TEA–21 outreach efforts. Several commenters including the Capital Area MPO in Albany, NY, argued that the advance acquisition of right-of-way in rapidly growing areas is desirable, cost effective and good policy. These commenters view land acquisition as environmentally neutral, in that unused land can be disposed of, often at a profit. Others, including the National Coalition to Defend NEPA, noted the inherent conflict between allowing advance right-of-way acquisition and corridor preservation initiatives, and the selection of a preferred alternative as part of the NEPA process. The National Coalition to Defend NEPA argues that purchase of land represents a commitment to a particular project location and that it, therefore, would influence the assessment of the project under NEPA.

Design-Build Contracting

Section 1307 of the TEA–21 permits a State or local transportation agency to award a design-build contract during project development provided that final design shall not commence before the NEPA process has been completed.

We have been concerned about design-build contracts (also called "turnkey" contracts) for federally-assisted projects being let before the NEPA process has been completed. To do so could give the appearance that the State or local transportation agency is fully committed to a single course of action, and that the NEPA process is simply a clearance exercise and not a true decisionmaking process. There may, however, be some situations in which design-build procurement can be structured to allow for the design-builders to work on an alternative emerging from the NEPA process. Our agencies recognize that the emerging interest in design-build contracting may warrant specific regulatory language or guidance addressing the relationship between design-build procurement and NEPA.

During the TEA–21 outreach efforts, some commenters suggested that design-build contracting provisions could include clauses that would preclude work on construction or the "building" of projects until after the NEPA Record of Decision[3] is made. The American Road and Transportation Builders Association (ARTBA) suggested that any work done on projects using this type of procurement method would be "at-risk" until the NEPA Record of Decision is announced, meaning that the work may have to be discarded if the NEPA process ultimately results in selection of an alternative project. In these cases, the State or local agency would not be eligible to receive Federal reimbursement until that time, and only if the action was consistent with the Record of Decision. The Virginia DOT suggested that design-build procurement awards should not be made until after the NEPA process had been concluded, at which point the specifics of the location and design decisions would be known. This approach has been used by the FTA in its Turnkey Demonstration Program. The Orange County Transportation Corridors Agency suggested that having a design-build agency on board at the earliest possible time is actually environmentally beneficial, since it can contribute valuable input in a timely way, to arrive at implementable and cost effective recommendations.

For highway projects, the FHWA's Office of Infrastructure is responsible for developing regulations which implement this TEA–21 provision. It is currently engaged in fact-finding and consultation among transportation partners including the American Association of State Highway and Transportation Officials (AASHTO), and anticipates beginning the formal rulemaking process next year. Achieving a balance between realizing the fullest time-savings potential of design-build contracting and maintaining the integrity of the NEPA process will be the subject of considerable discussion during that rulemaking process.

Our agencies intend to adopt consistent policies on the NEPA-related aspects of the design-build issue for two reasons: (1) Transit projects should not have procedural disadvantages in comparison to highway projects, and (2) Federal transit law (49 U.S.C. 5304(e)) requires that the FTA and the FHWA conform their NEPA processes to each other's.

Section-by Section Analysis of the Proposed Rule on NEPA and Related Procedures for Transportation Decisionmaking

This section of the notice of proposed rulemaking includes a section-by-section analysis of the proposed rule on NEPA and incorporates summary information on comments received on the Options Paper. All comments on the Options Paper are contained in the docket. The comments are, of necessity, summarized in each of the relevant sections of the proposed rule and are intended to provide an overall perspective on the comments submitted to the FHWA and the FTA. Details on specific comments and input can be obtained by reviewing the materials in the docket.

The proposed regulations have been reordered as to content and organized into the following four subparts:

Subpart A—Purpose, Policy, and Mandate;

Subpart B—Program and Project Streamlining;

[3] NEPA Record of Decision is the documentation of final action by the FHWA and the FTA regarding their decision on a project action (final alternative chosen, impacts, mitigation and basis for decision, etc.) addressed in an Environmental Impact Statement.

Subpart C—Process and Documentation Requirements; and
Subpart D—Definitions.

The following table highlights the reordering and organization for each proposed subpart:

Proposed Section	Current Section
Subpart A—Purpose, Policy, and Mandate	None.
1420.101 Purpose of this regulation	771.101 Purpose.
1420.103 Relationship of this regulation to the CEQ regulation and other guidance.	771.103 [Reserved]
1420.105 Applicability of this regulation	771.109(a) Applicability and responsibilities and 771.111(f) Early coordination, public involvement, and project development.
1420.107 Goals of the NEPA process	None.
1420.109 The NEPA umbrella	771.105 Policy.
1420.111 Environmental justice	771.105 Policy.
1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities.	771.105 Policy.
Subpart B—Program and Project Streamlining	None.
1420.201 Relationship of planning and project development processes.	None.
1420.203 Environmental streamlining	None.
1420.205 Programmatic approvals	None.
1420.207 Quality assurance process	771.125 Final environmental impact statements.
1420.209 Alternate procedures	None.
1420.211 Use of this part by other U.S. DOT agencies	None.
1420.213 Emergency action procedures	771.131 Emergency action procedures.
Subpart C—Process and Documentation Requirements	None.
1420.301 Responsibilities of the participating parties	771.109 Applicability and responsibilities.
1420.303 Interagency coordination	771.111 Early coordination, public involvement, and project development.
1420.305 Public involvement	771.111 Early coordination, public involvement, and project development.
1420.307 Project development and timing of activities	771.111 Early coordination, public involvement, and project development, and
None	771.113 Timing of administration activities.
1420.309 Classes of actions	771.115 Classes of actions.
1420.311 Categorical exclusions	771.117 Categorical exclusion.
1420.313 Environmental assessments	771.119 Environmental assessments.
1420.315 Findings of no significant impacts	771.121 Findings of no significant impacts.
1420.317 Draft environmental impact statements	771.123 Draft environmental impact statements.
1420.319 Final environmental impact statements	771.125 Final environmental impact statements.
1420.321 Record of decision	771.127 Record of decision.
1420.323 Re-evaluations	771.129 Re-evaluations.
1420.325 Supplemental environmental impact statements	771.130 Supplemental environmental impact statements.
Subpart D—Definitions	None.
1420.401 Terms defined elsewhere	None.
1420.403 Terms defined in this part	771.107 Definitions.

Subpart A—Purpose, Policy and Mandate

This proposed subpart sets out the framework for the FHWA/FTA NEPA process. It complements and supplements the United States Council on Environmental Quality (CEQ) provisions that serve a similar function for the entire Federal government.

Section 1420.101 Purpose of This Regulation

Current § 771.101 would be redesignated as § 1420.101 and revised to establish that the focus of the proposed regulation is to conduct a decisionmaking process for transportation projects that, under NEPA, integrates and streamlines compliance with all transportation and environmental laws applicable to decisionmaking during project development. Reference is made to the regulations for transportation planning as being a contributing factor to this decisionmaking process.

Section 1420.103 Relationship of This Regulation to the CEQ Regulation and Other Guidance

The proposed § 1420.103 does not appear in the current regulation. It clarifies that this regulation is to be read as a supplement to the CEQ's governmentwide regulations for implementing NEPA (40 CFR parts 1500–1508) and contains specific provisions for Federal surface transportation actions under our jurisdiction. Further, the proposed section acknowledges that, in addition to issuing revised NEPA regulations, we will conduct and fulfill our responsibilities under NEPA using any combination of approaches including, but not limited to, nonregulatory guidance, training, and technical assistance.

The CEQ regulations cover regulatory definition and general environmental procedural requirements (*e.g.*, acceptable development and evaluation of an acceptable range of alternatives). These are not repeated in this proposed rule because we want to avoid confusion by repeating or paraphrasing CEQ requirements. Reproducing requirements in the FHWA and the FTA environmental regulations that are identical to CEQ requirements could create potential conflicts and confusion as to the applicability of CEQ provisions not reproduced. Instead, the chosen approach makes a discernible connection between the different regulations, and provides the

opportunity for general practitioners to increase their familiarity with and understanding of the CEQ regulations, a familiarity of which is essential to their ability to comply fully with all of the environmental requirements applicable to transportation projects.

Section 1420.105 Applicability of This Regulation

The proposed section revises current §§ 771.109 and 771.111, Applicability and responsibilities and Early coordination, public involvement, and project development, respectively. The language appearing in paragraph (a) of the proposed section is a shortened version of paragraph (a) of current § 771.109. Paragraph (b) in the proposed section is essentially the existing criteria for allowable segmentation of projects, taken from paragraph (f) of § 771.111.

Section 1420.107 Goals of the NEPA Process

Proposed section § 1420.107 is to be read in close conjunction with the subsequent proposed § 1420.109. Section 1420.107 would establish the goals of the FHWA/FTA transportation decisionmaking process. The goals are drawn from a variety of statutory mandates, including NEPA itself, and provisions of the various transportation laws that authorize our programs. The NEPA process is a partnership among Federal, State, and local governments and, at times, private entities. Our intent in this section is to establish a common understanding within the partnership of the goals to be achieved through the NEPA process.

The FHWA and the FTA reaffirm their role as lead Federal agencies, and underscore their responsibility to manage the NEPA process with the objective of achieving these goals. This responsibility extends to ensuring that Federal NEPA decisions pay appropriate deference to State and local decisions made in good faith and not coerce a particular Federal point of view. State and local decisions made with full consideration of a broad range of social, economic, and environmental factors, and with the advice of appropriate Federal and other State resource agencies (i.e., the agencies responsible under law for the protection or management of natural and community resources) and with public involvement are those most likely to advance the NEPA goals.

Section 1420.109 The NEPA Umbrella

Proposed § 1420.109 would replace portions of current § 771.105, Policy. The proposed section sets forth our basic policy regarding how the decisionmaking process for surface transportation projects is to be conducted . The proposed section states the intent of our agencies to use the NEPA process as the overarching procedural construct under which the varied legal requirements, environmental issues, and public interests relevant to the transportation decision are brought to bear; hence the term "NEPA umbrella" is used to describe the concept. The consideration of a proposed action under NEPA concludes with a decision made in the best overall public interest: one that balances the need for safe and efficient transportation with the project's social, economic, environmental benefits and impacts, and the attainment of relevant environmental protection goals.

Experience in administering the NEPA process has shown that many practitioners do not fully understand or practice our approach of using the NEPA process as an umbrella for integrating their studies, reviews, or consultations and satisfying all relevant requirements in a single, integrated decisionmaking process. Instead, many have chosen to approach the various requirements as obstacles or hurdles to be addressed in a less than comprehensive fashion. Many delayed projects or failed processes can be traced back to a disintegrated and disconnected approach to meeting NEPA and other requirements. This section of the regulation is intended to clarify the preferred approach and explicitly demonstrate the multitude of factors that can influence Federal decisionmaking. Setting forth these expectations will contribute to a better, more efficient and timely NEPA process, one that is envisioned in the TEA–21 and highlighted in its section 1309 on environmental streamlining.

Section 1420.111 Environmental Justice

Subsequent to the previous regulatory revision in 1987, the 1994 Executive Order 12898 on Environmental Justice was issued to address disproportionately high and adverse human health and environmental effects of Federal government programs, policies, and activities on minority populations and low income populations. This section would be added to present regulatory language from our policy on environmental justice that is articulated in the DOT Order 5610.2 on Environmental Justice (62 FR 18377, April 15, 1997).

Section 1420.113 Avoidance, Minimization, Mitigation, and Enhancement Responsibilities

This section would present our policy regarding NEPA's mandate that Federal agencies, to the fullest extent possible, use all practicable means to restore and enhance, and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Our policy towards correcting adverse impacts is contained in the hierarchical but not necessarily sequential concepts of avoidance, minimization, and mitigation of impacts, and in the evaluation of environmental enhancements. The policy is consistent with the CEQ's approach to mitigation presented in 40 CFR 1500.2(f) and elsewhere, and would revise the language concerning mitigation of adverse impacts currently provided at § 771.105(d). The proposed language reflects also the broadened Federal funding eligibility for enhancement measures, such as transportation enhancement activities and transit enhancements, enacted with ISTEA and TEA–21. The section would address the eligibility for Federal funding (to the extent authorized by law), of measures to avoid, minimize, or mitigate impacts, or to provide or implement enhancements.

Our general responsibility for ensuring that mitigation is carried out would be presented in paragraph (d) of the proposed section, NEPA Commitments. These provisions would be redesignated from § 771.109(b) to streamline the subject matter of the new regulations; the original text would be revised to detail the responsibility for implementing mitigation measures and environmental enhancements that resulted from commitments made in the FHWA/FTA NEPA process.

Subpart B—Program and Project Streamlining

This subpart would group together a set of provisions aimed at improving the NEPA process, either on individual projects or on a programwide basis, so that transportation decisions can be made in a timely and environmentally sensitive manner. It would respond in part to the TEA–21 chapter on flexibility and streamlining, which addresses major investment study integration (section 1308) and contains the provisions on environmental streamlining (section 1309).

Section 1420.201 Relation of Planning and Project Development Processes

This section would clarify the relationship of the transportation

planning process and the project development process which is the subject of this NPRM. It reflects coordination with our concurrent proposed Metropolitan and Statewide Planning regulations; § 1420.318 of that proposed rule, and its preamble, provide further discussion of the relationship between the planning and project development processes. The section also stresses that the record of prior transportation planning activities, such as development of purpose and need and the systems-level evaluation of alternatives, shall be incorporated into the scoping or early coordination phases of an EIS or EA, respectively, in order to establish the alternatives to be advanced to the NEPA process.

Our agencies feel it is essential to clarify the nature of the linkage between planning and the NEPA process in this NPRM. The transportation planning process needs to be better coordinated with the project development/NEPA process so that transportation planning decisions can ultimately support the development of the individual projects which arise from transportation plans. During the TEA–21 outreach efforts, opinions varied over whether regulatory language or guidance should be used to integrate planning and programming activities, but most commenters agreed that the linkage between planning and project development needs to be cultivated. Many commenters, including the AASHTO and many State DOTs, opposed any regulatory language which would place requirements of NEPA into the planning process. Others, including the National Coalition to Defend NEPA, pointed to the need for the core values of the NEPA process to be incorporated into the planning process and suggested that regulatory language is in order.

The Options Paper discussed the notion that the establishment of purpose and need and the broad scale evaluation of alternatives can often be best accomplished during the planning process. How to frame the statement of purpose and need so that it is neither too narrow nor too broad is a continuing challenge. If too narrowly conceived, purpose and need can constrain the process with an unreasonably limited set of possible solutions; if too broadly constructed purpose and need may lead to an unmanageably large set of alternatives that unnecessarily bog down the process. Options to provide clearer direction regarding what constitutes an acceptable statement of purpose and need are being explored and we invite specific comments on this issue.

There was considerable support for allowing States and MPOs the option of addressing purpose and need in the planning process, and even to initiate the NEPA process at that time. This would allow stakeholders to conduct broad ranging planning and subregional studies, reach agreement on purpose and need during the planning process, and benefit from such analyses by using them directly in the NEPA process. There was also strong support for establishing a point during the NEPA process at which the participants would discuss and concur in a statement of purpose and need.

However, a considerable number of commenters, including many State DOTs and MPOs, objected to any mandate for the determination of purpose and need during planning and argued that it would burden the planning process and add considerable delay by seeking a determination of need at an inappropriate juncture.

The Surface Transportation Policy Project (STPP) recommended a two-stage NEPA process where the first phase would evaluate the range of social, fiscal, and environmental costs and benefits of various alternative visions for a corridor or community. Based on this evaluation, an initial statement of purpose and need would be articulated. This purpose and need statement would be very broad, an articulation of the goals for the area already arrived at through the planning process, for example. The STPP proposed that a wide field of inquiry would be maintained at this stage. Subsequent to this phase of evaluation, and once a detailed review of options is complete, an agency would have the information necessary to propose a revised, more specific statement of purpose and need. It would be this revised statement of purpose and need that would serve as the basis for a detailed review of alternatives under NEPA. Under both phases, the choice of a project purpose would be subject to public input.

The Environmental Law and Policy Center argued for the allowance of lower-cost and lesser impact project alternatives to be selected through the NEPA process even if they do not fully meet the stated purpose and need. Both the U.S. EPA and the U.S. Department of Interior argued for broadly defined purpose and need during planning to ensure that a full range of modal alternatives are considered.

The National Coalition to Defend NEPA expressed concern over the development of purpose and need during planning. It felt this could prematurely preclude options and alternatives and argued that, until the DEIS is completed, insufficient information is available with which to make such decisions. In short, it is concerned that defining purpose and need so early (in planning) could have the effect of "setting in stone" projects without adequate consideration of alternatives.

Commenters asked for examples, best practices and information on issues related to purpose and need determination, and there was general consensus that improvements in defining purpose and need are warranted. They felt that the difficulties articulated in the Options Paper relating to broad versus narrow statements of purpose and need are indeed real problems and that our agencies could provide useful guidance in this area.

We intend to provide continuity between the systems planning and project development processes so that the results of analysis performed during the planning stage, including project purpose and need, alternatives, public input, and environmental concerns are brought forward into project development. The proposed integration of the planning and project development process embodied in this regulation would enable a more broadly defined statement of purpose and need to be addressed at appropriate points in the integrated process.

There has also been much discussion of the standing given to planning decisions on alternatives to be advanced or dropped from consideration. The proposed regulation envisions an active discussion of this issue during scoping, with the involvement of the responsible planning agencies (*i.e.*, the MPO and/or the State DOT). Ultimately, the U.S. DOT agency, in cooperation with the applicant, must decide the range of alternatives to be evaluated in detail in the NEPA document. The proposed regulation allows these agencies to recognize planning decisions made with adequate supporting documentation. Though the form and content of this support will not be specified in the regulation, we expect to see some or all of the following offered in this context: technical studies as envisioned by proposed § 1420.318(b), documentation of public reviews and comments, formal policy board resolutions in the case of MPO actions, or other supporting materials. For proposed major transit investments, this review will also decide whether the documented planning activities constitute the Alternatives Analysis required by 49 U.S.C. 5309(e) or, alternatively, if the requirement must still be satisfied in the NEPA process.

We propose to provide more detailed treatment on the subjects of purpose and

need, and the development, analysis, and evaluation of alternatives in the comprehensive package of informational materials. This would include how to address alternatives which in the past have been rejected for not fully meeting traditional concepts of purpose and need. Further, we plan to showcase examples of successful practices which demonstrate how effective integration of planning and project development can protect communities and environmental resources and save time in providing needed transportation improvements.

Examples of issues that might be covered include: the further consideration of alternatives that may not fully meeting traditional concepts of purpose and need; more broadly defined purpose and need statements during the planning stage so that a full range of modal alternatives are considered; an alternative analysis that examines non-construction alternatives that use transportation demand strategies; and flexibility to encourage the consideration of alternatives which may have lower than originally desired levels of transportation service if there are cost, time, and impact savings that justify the lower levels of transportation service.

We are soliciting comments on a suggestion that specifically addressing the requirements of the major investment study in the planning process would enhance that process by forging a clearer link between the planning and the project-level NEPA processes, leading to greater streamlining at the project level.

Section 1420.203 Environmental Streamlining

This new section would be added to reflect the requirements of section 1309 of the TEA–21. The basic premise of section 1309 of the TEA–21 was to address concerns relating to delays, unnecessary duplication of efforts and costs associated with the development of highway and transit projects. Section 1309 also stipulates that nothing in section 1309 shall affect the applicability of NEPA or any other federal environmental statute or affect the responsibility of any federal offices to comply with or enforce such statutes. The rule responds to the TEA–21 environmental streamlining provisions by establishing a process intended to coordinate Federal agency involvement in major highway and transit projects with the goals of identifying decision points and potential conflicts as early as possible, integrating the NEPA process as early as possible, encouraging the full and early participation of all relevant agencies, and establishing coordinated time schedules for agencies to act on a project.

This proposed section of the regulation establishes the "coordinated environmental review process" which section 1309 of the TEA–21 directed the Secretary of Transportation to develop and implement. Paragraph (a) lays out the elements of this coordinated environmental review process, providing a substantive but flexible set of actions to be taken by the U.S. DOT in cooperation with the applicant to ensure that the goals of section 1309 are met. An important element of this coordinated environmental review process is reaching closure among the Federal agencies on the scoping process. This paragraph calls for agency concurrence at the end of scoping, which could take various forms depending upon the mutual understandings and agreements of the Federal agencies. In the event of nonconcurrence, this paragraph provides also for means to resolve interagency disagreements at the earliest possible time. Paragraph (b) describes the process for applying the coordinated environmental review process to State level environmental reviews. Paragraph (c) would implement the provisions of the statute which allow the Secretary to decide not to apply section 1309 to the preparation of an environmental assessment. Paragraph (d) would implement the CEQ NEPA regulation provisions on paperwork reduction and clarifies that the NEPA documentation need not explicitly contain a finding that a particular impact does not exist. For example, if the environmental inventory revealed that there were no wetlands in the project area, a specific finding indicating that the project would have no impacts on wetlands would not be required. This provision would help to focus NEPA documents on important issues in accordance with the CEQ NEPA regulations' provision on paperwork reduction.

One consistent theme that emerged through the outreach process pointed to the need for early and up-front involvement of Federal agencies in the NEPA process and for close coordination and cooperation among the Federal agencies throughout the process. The State DOTs, the MPOs, the National Association of County Engineers, the U.S. EPA, and the U.S. Department of Interior all felt that Federal agency involvement is critical to successful implementation of the environmental streamlining provisions. They also recommend that our field offices and the resource agencies' field offices throughout the country have the authority to participate in, review, and respond to issues associated with the NEPA process.

Inasmuch as stakeholder sentiments echoed a need for early collaboration and close coordination with all interested and affected parties, they also strongly reinforced the need for flexibility at the State and local levels for implementing the goals of streamlining. A "one-size-fits-all" regulatory approach was soundly rejected by an overwhelming majority of stakeholders, other Federal agencies, practitioners, project sponsors, and field offices.

We believe that successful implementation of environmental streamlining must be based upon a number of principles, and are pursuing a process that will ensure effective environmental decisionmaking in a timely manner. Both transportation and resource agencies must improve their environmental review processes. The U.S. DOT will provide national leadership on environmental streamlining, and is working with CEQ and headquarters offices of the EPA, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. National Park Service, the U.S. National Oceanic and Atmospheric Administration, the Advisory Council on Historic Preservation and others to obtain commitments to better decisionmaking. The framework for this commitment to the environment and to streamlining the environmental process is set forth in the national Memorandum of Understanding (MOU) which was entered into by the aforementioned agencies in July 1999.[4] We fully expect to track the commitments reflected in the national MOU. We recognize that tangible progress will evolve locally, and State by State, at different rates, based largely on good working relationships and trust established among the agencies at the field office level.

We are proposing to implement the environmental streamlining requirements largely outside of the regulatory process through the following means: (1) U.S. DOT memoranda of understanding with Federal or State agencies; (2) establishment of dispute resolution processes; (3) streamlining pilot efforts; (4) authorization of the U.S. DOT to approve State DOT or transit agency requests to reimburse Federal agencies for expenses associated with meeting expedited time frames; and (5) establishing performance measures to evaluate and measure success in both

[4] This Memorandum of Understanding is available electronically from FHWA's website at *http://www.fhwa.dot.gov/environment/strming.htm.*

environmental stewardship and environmental streamlining. We have established an environmental streamlining page on the FHWA website to keep the public up to date on our ongoing activities and resources (http://www.fhwa.dot.gov/environment/strming.htm). We are also providing a detailed description of our work to date on the following:

(1) National MOU

The central effort on the national MOU has been to craft an agreement among agencies which demonstrates a commitment to key principles and upon which further agreements can be executed at a local or regional level to address more specific issues. Establishing and maintaining clear and frank communication has been at the heart of the national MOU and would be the primary guide to further interagency agreements.

The process of developing the national MOU was aimed chiefly at responding to the concerns regarding early and up-front involvement of Federal agencies in the NEPA process and for close coordination and cooperation between Federal agencies throughout the process. We are working with representatives of other Federal agencies at the headquarters and field levels to develop a common understanding of the environmental streamlining provision and a coordinated implementation strategy. The development of the national MOU has followed the suggestion of AASHTO, Association of Metropolitan Planning Organizations (AMPO), and many State DOTs that the MOU include broad principles of agreement on how the NEPA process would be carried out but that project-specific or program-specific MOU's need to be developed at the State, regional, or local level, based upon these broad principles, and tailored to specific local circumstances or projects.

(2) Dispute Resolution Procedures

Procedures for resolving conflict at the national, regional, and State levels are under development. Mediation methods and systems for alternative dispute resolution are being developed and training programs in these methods will be established. This approach will enable parties to seek timely intervention over disputes during the project development process, as a way to circumvent and minimize the number of environmentally unacceptable projects that may otherwise be referred to CEQ for resolution, by either reestablishing consensus on the need for the project or reaching consensus to drop the project entirely. Alternative dispute resolution strategies will be defined so that they can be effectively applied to improve institutional relationships among parties or to resolve conflicts surrounding specific project issues.

On the matter of dispute resolution procedures, commenters made three key points. They felt that explicit time frames for document reviews are needed and should be agreed to, to the fullest extent possible, up-front in the process. Secondly, they supported an approach where the parties to the MOU agree, at an early stage, on the level of information and detail that is needed at various steps in the NEPA process. Resource agencies expressed frustration with the timing and level of detail of information that they are asked to consider and act upon, and State and local implementing agencies expressed frustration due to uncertainties over what specific information and level of detail would be required of them by the Federal resource, regulatory and permitting agencies. A third point made by many stakeholders was that procedures on coordination, documentation, and communications should be agreed to as early as possible. They felt that this would help to resolve differences that arise at various points in the process and which can contribute to delays.

(3) Pilot Efforts Are One Effective Mechanism for Testing and Evaluating Change

One specific topic suggested for pilot projects was from the North Carolina DOT and the American Road and Transportation Builders Association, which suggested the testing of alternative approaches to gaining interagency cooperation during the NEPA process. The Virginia DOT suggested that pilot project efforts should be directed at finding ways to resolve differences between Federal agencies. A third suggestion was that pilot projects should test approaches to providing States flexibility in carrying out the NEPA process.

Not all commenters supported the concept of pilot projects, however, and the National Coalition to Defend NEPA questions the legal authority of our agencies to conduct pilot projects and cautioned against using pilot projects to "back-door" the NEPA process. It was also concerned that pilot efforts not only involve partnership development between Federal and non-Federal partners and resource permitting agencies, but also include groups representing the public as well.

Based on the input received on the issue of pilot efforts, we are not proposing to establish a formal process for pilots at this time, through regulation or any other means. Instead, we will participate in pilot efforts on a case-by-case basis. These pilot efforts might be focused on a single project or on improving a particular process, but would not include the delegation of Federal NEPA responsibilities to States that was considered but not enacted in the TEA–21. We will continue to coordinate closely with the U.S. EPA, the AASHTO and others who are developing pilot efforts, and will actively assist in sharing information on efforts including lessons learned.

(4) Use of Titles 23 and 49, U.S.C., Funds To Pay for Environmental Agency Work

The agency reimbursement language in the environmental streamlining provisions of the TEA–21 offers an opportunity to partially overcome an historic obstacle, that Federal agencies cannot involve themselves in the process early enough or regularly enough due to resource constraints within agencies. The TEA–21 includes specific conditions allowing States and transit agencies to use Federal transportation funds for reimbursement of expenses related to work done to meet the expedited time schedules required by section 1309 of the TEA–21. In addition, other statutory authorities exist for agency reimbursement, and we are exploring the full range of options for reimbursing agencies through any of the available authorities. Furthermore, approaches to developing collaborative efforts with other Federal agencies are being explored in order to develop model reimbursement agreements, and to facilitate the implementation of such agreements by Federal agency field staff.

Due to the need for flexibility and the different practices and needs of various State and resource agencies, it was determined that nonregulatory guidance would most appropriately address the use of Federal transportation funds for reimbursing costs associated with streamlining. Hence, we engaged participation by many other affected Federal agencies to develop a single guidance package that would be useful to transportation and environmental agencies, including State DOT's and transit agencies and Federal, State, and local resource agencies. The breadth of situations that might be addressed under this provision was such that the guidance does not try to anticipate them all. Rather, it reinforces the Federal government's belief in effective interagency coordination and

demonstrates a commitment from Headquarters offices to support field efforts in implementing this provision of the TEA–21.

There were a number of comments on this TEA–21 provision and a suggestion from the American Road and Transportation Builders Association that the principles to apply to reimbursement should include a provision that reimbursement for Federal agency activities to expedite NEPA reviews must be linked to a specific project, set of tasks, and person or position to be involved on behalf of the Federal agency. Others, including the Nevada and Missouri DOTs, felt that reimbursing an agency for working on one project over another is not a good approach. Reimbursing agencies for doing their jobs, it was argued, would introduce a bias into the NEPA process which would result in an expedited review or enhanced level of participation on some projects over others.

(5) Performance Measures

Our agencies have a joint effort underway to evaluate the timeliness and the effectiveness of the NEPA process at arriving at decisions that are in the best overall public interest. Further information on this effort can be obtained from the FHWA.

Section 1420.205 Programmatic Approvals

Section 1420.205 would be added to establish in regulation the FHWA/FTA practice of using programmatic environmental approvals as one way of addressing recurring situations in a streamlined manner.

This practice has been especially effective with categorical exclusions for meeting the NEPA requirements in uncomplicated and non-controversial situations. One example of this are programmatic categorical exclusion approvals in which FHWA and a State DOT established a set of environmental impact thresholds, which, if not exceeded, allow the State DOT to apply the categorical exclusion approval without a project specific review by FHWA. Periodically, the FHWA reviews a sample of projects after-the-fact to ensure that the approval was appropriately applied. Other examples of programmatic approvals include section 4(f) approvals for minor uses of parkland and approval to delegate certain USDOT responsibilities under the recently issued regulations implementing section 106 of the National Historic Preservation Act. The proposed section explicitly recognizes the appropriateness of programmatic approaches for compliance with NEPA and related statutes, but does not specify the types of actions for which programmatic approaches would be created. Programmatic approaches to meeting the NEPA requirements which would not directly involve project level Federal approvals would be subject to periodic process reviews to ensure that they are being properly applied. This would enable the Federal agencies to focus limited resources on more problematic project-level decisions and to maintain a quality assurance role for projects with beneficial or de minimis environmental impacts. There was general support for such an approach in comments on the Options Paper. We invite comments on public notice and interagency coordination processes appropriate for making programmatic approvals.

Section 1420.207 Quality Assurance Process

This new proposed section would establish an internal responsibility for our agencies to employ appropriate quality management methods to assure that the NEPA responsibilities are carried out in a competent and timely manner. Such a process is intended to streamline the process by institutionalizing lessons learned throughout the administration of our programs and NEPA so that mistakes are not repeated and innovative approaches are fully implemented.

The requirements in the current regulation for legal sufficiency review of Final Environmental Impact Statements (FEIS) and prior concurrence of the Headquarters on certain FEISs would be incorporated into this proposed section. These processes have proven helpful in assuring the quality of analysis, coordination, and documentation and can prevent costly and timely lawsuits and conflicts. As proposed, the nature of legal sufficiency review and the threshold for requiring prior concurrence at Headquarters would not be specified in regulation, but would be the subject of internal orders.

Section 1420.209 Alternate Procedures

This new section would be added to establish the procedures for processing and approving alternate procedures for complying with this regulation. This would give us the flexibility to partner with CEQ and State DOTs or transit agencies on NEPA reinvention efforts that achieve the goals of the NEPA process by using alternate methods or procedures that are more in tune with and supportive of non-Federal decisionmaking requirements.

Section 1420.211 Use of This Part by Other U.S. DOT Agencies

In 1993, the U.S. DOT National Performance Review effort recommended that the NEPA procedures of the various modes be blended into a single process. Efforts to accomplish this unified procedure were purposely delayed until after passage of the surface transportation reauthorization which became TEA–21. Recent discussions within the U.S. DOT are now pointing toward a dual effort, one element of which would cover the entire department, the other of which is this proposed regulation covering just the FHWA and the FTA. To advance the first element, U.S. DOT would revise the U.S. DOT Order on NEPA to update the departmentwide statement of environmental policy and to remove barriers to collaboration between the U.S. DOT modes on NEPA issues. It would provide authority for one U.S. DOT agency to use the NEPA procedures of another U.S. DOT agency or to act as the agent for another U.S. DOT agency when a situation warrants. This proposed section clarifies in regulation that the internal order is considered legally sufficient to provide these authorities. The further action at the departmental level to amend the U.S. DOT Order on NEPA is under development.

Most Options Paper commenters, including State DOTs, MPOs, associations, and authorities supported a coordinated approach to NEPA within the U.S. DOT and its modal administrations. There was strong support for the elimination of differences in how the FHWA and the FTA manage the NEPA process and for a consolidation of these approaches in the updated regulation. In addition, there was strong support from New York DOT, the American Road and Transportation Builders Association and others for the elimination of provisions duplicating the CEQ regulations, which many thought would lead to a streamlined regulation. Finally, many commenters supported the notion of the FHWA and the FTA having strong oversight over the NEPA process. Equally important, commenters noted, is that there be a true partnership between Federal agencies and State and local agencies.

Section 1420.213 Emergency Action Procedures

This proposed section would contain the provision currently found at 23 CFR 771.131.

Subpart C—Process and Documentation Requirements

This proposed subpart describes the requirements of carrying out the NEPA process, including establishing the roles of various governmental agencies and the public in the process, determining the appropriate level of environmental documentation under NEPA, and laying out the procedural requirements for processing NEPA documents. It complements and supplements the CEQ regulations that provide the general NEPA framework for the entire Federal government. In addition to the regulatory requirements described in this subpart, the FHWA's and FTA's comprehensive package of informational materials will provide detailed nonregulatory approaches to many of the subjects herein.

Section 1420.301 Responsibilities of the Participating Parties

This is a new section that addresses some of the items currently contained within § 771.109. Paragraph (a) of the proposed section utilizes the current CEQ regulations (40 CFR 1500–1508) to define terms and set forth concepts, such as: Lead and cooperating agencies; the relationship between Federal agencies, applicants, and contractors; and enhancing the efficiency of the NEPA process through cooperation between Federal, State, and local agencies.

Paragraph (b) would clarify in regulation current practice for administering the NEPA process for projects implemented directly by the Federal government on Federal lands. Namely, it is a shared responsibility of the U.S. DOT and the Federal land management agency. The precise nature of the responsibility is specified in agreements or standard operating procedures.

In the previous regulations, the provision in 23 CFR 771.109(c) on agency responsibilities is largely repetitive of what is also found in CEQ's regulations on NEPA. For this rulemaking effort, we are reluctant to propose regulatory language which simply restates existing sections of another regulation, and would streamline this section accordingly. Paragraph (c) of the proposed section addresses the use of contractors in the NEPA process for contracting for environmental and engineering services. The proposed rule allows a State to procure the services of a consultant, under a single contract, for environmental impact assessment and for subsequent post-NEPA engineering and design work in accordance with the provisions of 23 U.S.C. 112(g), as amended by the TEA–21.

Section 1205 of the TEA–21 allows a State to procure under a single contract, the services of a consultant to prepare environmental documents for a project, and to perform subsequent final engineering and design work on the project. This would only occur if the State conducted a review assessing the objectivity of the environmental documentation. Experience has shown that, although on many projects consultants do prepare the bulk of the detailed analyses and NEPA documentation, this process involves close oversight by the State or local public agency and by the lead Federal agency. It is the ongoing responsibility of our agencies to ensure that all consultant work reflected in the NEPA process and documentation meets appropriate standards of objectivity and professionalism.

The contracting provisions were included in the TEA–21 to clarify our agencies' positions on the use of contractors for environmental and engineering design work for Federal transportation projects, and were chiefly aimed at addressing concerns of potential conflict of interest on the part of the consultants.

The U.S. DOT believes that more detailed nonregulatory guidance will best address the specifics of disclosure statements, other requirements of 40 CFR 1505.5(c), and the requirement for a review of the objectivity of the environmental document.

Generally speaking, commenters on the Options Paper felt that current level of oversight and review is sufficient, and that additional documentation to ensure objectivity is unnecessary. The EPA suggested the need for the development of Federal procedures for monitoring, investigating, and resolving conflicts that might result from this TEA–21 provision.

Section 1420.303 Interagency Coordination

The proposed section would revise the current § 771.111 (a) through (e). The proposed section would simplify the current section by focusing on key terms and concepts that are the basis of an integrated decisionmaking process conducted under the NEPA umbrella. For example, the proposed section features the term "interagency coordination" to supplement the current "early coordination" in order to better express the collaborative intent of the FHWA/FTA NEPA process. The proposed section provides an explanation of the role and function of interagency coordination in the NEPA process. The term "interested agencies" would be added. The proposed section briefly outlines a procedure for notifying affected Federal, State, and local entities of the availability of approved documents for classes of action other than an EIS.

Scoping and early coordination can set the tone, positive or negative, for subsequent project development activities. Experience has shown that many of the conflicts which delay Federal approvals of highway and transit projects are somewhat predictable, and might be better anticipated and managed by using the scoping process as an early warning system. In addition, the development of interest-based negotiating and collaborative problem solving skills can help to craft implementable solutions. Two possible solutions emerged through the outreach process that could assist Federal agencies and applicants in performing more effective project scoping. One approach to the scoping of complex projects is that agencies agree on review schedules, but only after sufficient information on issues has emerged to allow them to gauge the required level of effort for their respective agencies. Another approach might make the scoping process, as part of an aggressive, high visibility project management role by our agencies as the lead Federal agenc(ies), a mechanism for identifying the issues, and agreeing on roles, time frames and methodologies associated with advancing the project, and possibly memorializing that agreement in a project MOU.

Both program reviews and feedback from stakeholders indicate that the FHWA and the FTA need to take a stronger leadership role in the NEPA process. Commenters including the National Coalition to Defend NEPA, the AASHTO, the American Road and Transportation Builders Association, and others reinforced this point in their comments on the Options Paper. These groups said that the FHWA and the FTA staff should attend meetings and serve as conflict resolution agents and mediators between other agencies. Also, they told us that we should provide information, such as, handbooks, best practices on scoping, and training for practitioners. As was the case in many areas, stakeholders including MPOs, State DOTs and others feel that much progress can be made in better integrating environmental and other considerations into the planning process through training, examples of where new approaches are working, handbooks and other useful materials.

Many of the detailed considerations of the scoping process are outside the

scope of this proposed rule, and will be addressed separately. Effective project scoping and interagency coordination is a chief topic of our environmental streamlining efforts, and will be given more detailed treatment in the comprehensive package of informational materials to be issued in conjunction with the final rule. Scoping may also be the subject of further guidance on its own. We will make full use of input received through the outreach efforts, as well as through our ongoing coordination with transportation and environmental agencies, in the development of this additional guidance.

Section 1420.305 Public Involvement

Current § 771.111(h) would be redesignated as § 1420.305. It remains relatively unchanged for State DOTs except that the separate requirements specific to the FHWA and the FTA programs would be deleted; and new references specific to public involvement procedures, notification requirements, and accommodations for those with disabilities would be added. A requirement would be added to specifically ascertain if public involvement is warranted whenever a reevaluation is being conducted. Also a minimum 45-day public comment period would be established whenever public involvement procedures are initially adopted or revised.

The proposed rule also aims to consolidate requirements of our two agencies for public involvement so that the U.S. DOT can offer a more consistent approach on this subject. Based upon comments to the Options Paper, there was resounding support for a consistent approach to public involvement requirements between the FHWA and the FTA and this was cited by the National Coalition to Defend NEPA as one way to make the planning process more accessible and understandable to the public. This consolidation may mean that some transit agencies may have to formalize their public involvement procedures through board adoption, or revise their procedures to ensure their applicability to the NEPA process. The FTA does not expect to find many transit agencies without existing adopted procedures applicable to project development, but invites comment on this concern. We recognize the importance of public involvement to informed decisionmaking, and have issued a number of publications which provide nonregulatory guidance on how to increase the effectiveness of applicants' public involvement efforts.

The new § 1420.305(d) recognizes the need for public involvement on certain re-evaluations where the elapsed time may have altered public expectations.

Section 1420.307 Project Development and Timing of Activities

Current § 771.113 would be redesignated as § 1420.307 and revised. The proposed section would clarify the circumstances in which the FHWA/FTA would not approve initiation and funding for certain activities, such as, final design activities. The proposed section would encourage compliance with the requirements of all applicable environmental laws, regulations, executive orders, and other related requirements be demonstrated prior to approval of the final environmental documents or categorical exclusion (CE) designation. Conditions under which agencies responsible for metropolitan and statewide planning would be notified in order to satisfy the planning and programming requirements of proposed 23 CFR part 1410 would be identified.

However, under the NPRM the FHWA and the FTA would not prevent State and local governments and private entities from taking certain actions that are "at risk" of being rendered useless by the final NEPA decision. Such actions include final design or land acquisition prior to NEPA approval, but do not include those that would have an adverse impact, such as, demolition or construction. The FHWA and the FTA would view at risk activities that actually substantially harm environment as so subverting the NEPA process that we would inform applicants that the action would be ineligible for FHWA or FTA financial assistance. The FHWA and the FTA would not finance such "at risk" actions, and would not allow their decisions to be influenced by the actions taken by others. For projects that will be federally-funded, the present regulation prohibits final design and land acquisition (with certain limited exceptions) prior to the completion of the NEPA process. The enforcement of this prohibition has been confounded by the fact that specific funding sources, especially for smaller projects, are often not identified until late in project development. Hence, the applicability of the Federal requirements that attach only to Federal funding sources is not yet determined at the time the "at risk" activities are initiated.

We are considering issuing guidance on how to handle such situations, especially in terms of disclosure responsibilities.

We propose to clarify that full compliance with the transportation conformity rule (40 CFR parts 51 and 93) is required prior to the *approval of the final EIS, FONSI or CE*[5] *designation.* As a result, this proposal would allow preliminary engineering for project development activities to be done prior to final NEPA approval without having to meet conformity requirements. We request public comment on our proposed clarification.

We believe that this proposed change is allowed under current regulations. While the conformity rule requires that a project come from a conforming plan and transportation improvement program (TIP) before final NEPA approval, the rule does not explicitly specify that the project must be in a conforming plan and TIP in order to initiate the NEPA process. In fact, 40 CFR 93.126, table 2, identifies as exempt, "engineering to assess social, economic, and environmental effects of the proposed alternatives to that action." We feel that this is an important distinction that may help to improve the quality of the NEPA process leading to more effective, efficient, and environmentally sound judgments, without compromising the planning process and air quality analysis.

We believe that the emissions impacts of the project should be considered as early as possible and continue to encourage the inclusion of projects in the plan and TIP conformity analysis as early as feasible prior to the completion of the NEPA process where it is feasible. Earlier inclusion of the project in the plan and TIP is beneficial for the overall development of the plan and TIP because regional analysis is used as a long term indicator of the area's emissions impacts and associated problems. Early analysis of projects in the plan and TIP allows a more comprehensive long term assessment of how emissions impacts can be minimized, whether through changes in the timing of projects or changes to the composition of the plan and TIP.

However, a major problem with this approach is that it is counterproductive to corridor planning, prejudges alternatives and can limit thorough exploration of all feasible alternatives throughout the project development process. It can be counterproductive to, rather than supportive of, good long term transportation systems planning in certain circumstances. The reason for this is that in order for a project to be included in the regional plan and TIP and regional analysis prior to

[5] Environmental Impact Statement (EIS), Finding of No Significant Impact (FONSI), categorical exclusion (CE).

completion of NEPA, certain assumptions must be made about the project and related emissions impacts. It is difficult to define project design concept and scope that early in the planning process, especially for those projects requiring the highest level of environmental review and scrutiny. When taking complex projects through the project development process, it is very difficult to simply define two points of connection to the network, the number of lanes and facility type (that which is needed for regional analysis). Complex projects and corridor projects often examine multimodal options, some of which are not fully developed until later in the NEPA process. Under this scenario, the assumptions for regional analysis for conformity purposes may encourage an overly narrow alternatives analysis and constrain the environmental review process. We request comment on whether similar experiences have occurred in practice when accounting for preliminary engineering for project development in regional conformity analyses.

It is important to note that, under this proposal, preliminary development of new projects could proceed during a conformity lapse, since such activities would not need to meet conformity requirements. However, final NEPA documents on new projects could not be approved under this proposal until a new conforming plan and TIP are in place.

We believe the frequency requirements for conformity are sufficient to ensure that full emissions impacts of the projects are accounted for before projects move into the final design; therefore, long term risks are minimal and the projects must be included in the regional conformity emissions analysis prior to the completion of NEPA. The regional emissions analysis and conformity determinations can be made as frequently as once a year, but at a minimum at least every three years; therefore, it is reasonable to allow environmental reviews and the NEPA process to be initiated without the project being included in the conformity analysis.

Section 1420.309 Classes of Actions

Current § 771.115 would be redesignated as § 1420.309 and the text would remain the same, except for the addition of certain intercity railroad and intermodal actions.

Section 1420.311 Categorical Exclusions

The proposed § 1430.311 would make several changes from the list of CEs in the current § 771.117 to reflect changes in the FHWA and the FTA programs since 1987. Modal limitations would be eliminated wherever possible. In addition, the CEs would be reordered and regrouped so that similar actions are listed together. The CEs would continue to be organized into two major groupings: those in paragraph (c) that require no further U.S. DOT agency approval, and those in paragraph (d) that require a written demonstration that the CE is appropriate. Paragraph (c) would clarify the need for NEPA approval by the U.S. DOT agency for listed CEs to which other environmental laws (*e.g.*, section 106 of the National Historic Preservation Act) apply.

The proposed changes in CEs in paragraph (c) would be as follows:

Paragraph (c)(1) (non-construction activities) would incorporate the text of current § 771.117(c)(1), (c)(20), and part of (c)(16) without substantive change. It would add designations to the National Highway System to the list.

Paragraph (c)(2) (resurfacing) would move part of the text of current § 771.117(d)(1) to paragraph (c). Experience has shown that simple resurfacing of an existing pavement does not require additional written information for a CE determination.

Paragraph (c)(3) (routine maintenance) is not explicitly covered in the current § 771.117, but it is an important program activity, especially for transit with the re-definition of preventive maintenance as a capital expense.

Paragraph (c)(4) (ITS elements) is not explicitly covered in the text of current § 771.117. Installation of isolated ITS elements is proposed for paragraph (c), but an areawide coordination of multiple ITS elements that would have greater impact on the transportation system is proposed for paragraph (d)(2).

Paragraph (c)(5) (safety programs) would incorporate the text of current § 771.117(c)(4) and would add a current CE of the Federal Railroad Administration related to safety.

Paragraph (c)(6) (support facility improvements) would incorporate the current § 771.117(c)(12), but would extend it to cover toll facilities, control centers, and vehicle test centers, facilities that are similar in size and activity to those in the current CE.

Paragraph (c)(7) (carpool programs) uses a defined term to incorporate the text of current § 771.117(c)(13) except that carpool activities requiring land acquisition and construction (such as new parking lots) would be excluded and covered in paragraph (d)(6).

Paragraph (c)(8) (emergency repairs) would incorporate the text of current § 771.117(c)(9), but extends it to cover modes other than highways.

Paragraph (c)(9) (operating assistance) would incorporate the second part of the text of current § 771.117(c)(16) without substantive change.

Paragraph (c)(10) (vehicle acquisition) would incorporate the text of current § 771.117(c)(17) without substantive change.

Paragraph (c)(11) (purchase and lease of equipment) would incorporate the text of current § 771.117(c)(19), but would extend it to cover leases and the capital cost of contracting for transit services.

Paragraph (c)(12) (vehicle rehabilitation) would incorporate the current § 771.117(c)(14), but would extend it to cover conversions to alternative fuels.

Paragraph (c)(13) (track maintenance) would incorporate the text of current § 771.117(c)(18), but would extend it to cover wayside systems in addition to tracks and railbeds.

Paragraph (c)(14) (bicycle-pedestrian facilities) would incorporate the text of current § 771.117(c)(3) except that bicycle and pedestrian projects requiring land acquisition and construction (such as bike paths on new right-of-way) would be excluded and covered in paragraph (d)(19).

Paragraph (c)(15) (ADA accessibility) would incorporate the text of current § 771.117(c)(15) without substantive change.

Paragraph (c)(16) (signing, etc.) would incorporate the text of current § 771.117(c)(8) without substantive change.

Paragraph (c)(17) (property management) would incorporate the text of current § 771.117(c)(2), (5), and (11), and similar property management activities under the transit program. In addition, disposal of excess property would be moved from § 771.117(d)(6) because experience has shown that the sale or transfer of property does not have significant impact in and of itself, and the U.S. DOT agency does not have the statutory authority to control the subsequent use of property after it has been sold by the applicant.

Paragraph (c)(18) (transportation enhancements) would incorporate the text of current § 771.117(c)(7) and (10), and would add other transportation enhancement activities and transit enhancements to the list.

Paragraph (c)(19) (noise walls) would incorporate the current § 771.117(c)(6) without substantive change.

Paragraph (c)(20) (mitigation banking) would be added due to the transportation enhancement provisions and changes in the mitigation policies of Federal resource agencies that allow or encourage this form of mitigation.

The proposed changes in CEs in paragraph (d) would be as follows:

Paragraph (d)(1) (highway rehabilitation) would incorporate the text of current § 771.117(d)(1) except that simple resurfacing is now proposed to be moved to paragraph (c) and would not require a written CE demonstration.

Paragraph (d)(2) (operational improvements) would incorporate part of the text of current § 771.117(d)(2), with clarification through examples of the ITS systems that would be covered.

Paragraph (d)(3) (safety improvements) would incorporate parts of the text of current § 771.117(d)(2) and (3) without substantive change. It would add safety-related programs of recent importance including seismic retrofit and mitigation of wildlife hazards.

Paragraph (d)(4) (bridge rehabilitation) would incorporate part of the text of current § 771.117(d)(3) with the clarification that the approaches to the bridge or tunnel would also be included in the project and that historic bridges and bridges providing access to ecologically sensitive areas are excluded.

Paragraph (d)(5) (bridge replacement) would incorporate the remaining part of the text of current § 771.117(d)(3). If applicable, "section 106" (National Historic Preservation Act (16 U.S.C. 470 *et seq.*)), "4(f)" (49 U.S.C. 303), "section 404" (Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 to 1376)) and coastal zone management issues must be addressed in the CE documentation and coordinated with the other agencies in accordance with those statutes.

Paragraph (d)(6) (parking facilities) would incorporate activities from the current § 771.117(c)(13) and (d)(4), but would apply to all parking facilities, not just those on transportation fringes, if the CE conditions are met.

Paragraph (d)(7) (new operations centers) would be added as a CE primarily covering the construction of buildings to house the control centers from which ITS systems are operated and managed.

Paragraph (d)(8) (support facility construction) would incorporate the text of current § 771.117(d)(5) with the addition of other similarly sized support facilities.

Paragraph (d)(9) (access control) would incorporate the text of current § 771.117(d)(7) without substantive change.

Paragraph (d)(10) (track improvements) would incorporate the text of current § 771.117(c)(18) in situations where land acquisition is needed.

Paragraph (d)(11) (storage yards and shops) would incorporate the text of current § 771.117(d)(8) and (11) without substantive change.

Paragraph (d)(12) (building renovation) would incorporate the text of current § 771.117(d)(9) without substantive change.

Paragraph (d)(13) (transfer facilities) would incorporate the text of current § 771.117(d)(10) without substantive change.

Paragraph (d)(14) (ferry facilities) would be added as an explicit statement that work on existing ferry facilities may be a CE, but concern for water-related impacts necessitates its inclusion in paragraph (d) so that a written CE demonstration must be provided.

Paragraph (d)(15) (rail service demonstrations) would be added as a CE, based on our experience with previous similar cases. If the service demonstration were to lead to proposal for permanent service involving Federal financial support, that permanent project would be separately evaluated for its impacts.

Paragraph (d)(16) (advance land acquisition) would have three parts to it as follows:

(1) Paragraph (d)(16)(i) would allow the acquisition primarily of underutilized private railroad rights-of-way (ROW). It reflects current FTA practice where present or recent rail operations on the ROW ensure that adjacent land uses remain generally compatible with the continued transportation use of the ROW;

(2) Paragraph (d)(16)(ii) would respond to the provisions of the TEA–21 section 1301 without attempting to elaborate on those provisions. Such elaboration would be covered in separate guidance on the issue of advance land acquisition; and,

(3) Paragraph (d)(16)(iii) would incorporate the text of current § 771.117(d)(12) covering hardship and protective acquisitions, without substantive change.

Paragraph (d)(17) (joint development) would incorporate part of the text of current § 771.117(d)(6) without substantive change.

Paragraph (d)(18) (bicycle facilities) would incorporate activities covered in the text of current § 771.117(c)(3). With this change, bicycle projects involving land acquisition and construction would require a written CE demonstration.

Paragraph (d)(19) (storm water management) would add a new CE that covers a transportation enhancement activity that may involve land acquisition and construction of storm water detention or retention ponds. It is, therefore, proposed to be included in the list where a CE demonstration is required.

Paragraph (d)(20) (historic transportation facilities) would add a new CE that covers a transportation enhancement activity that will have section 106 (historic preservation) implications. It is, therefore, proposed to be included in the list where a CE demonstration is required.

Paragraph (d)(21) (other transportation enhancements) would add a new CE that covers the other transportation enhancement activities and transit enhancements that are not explicitly listed.

We propose additional, nonregulatory guidance on situations where a group of different, but related, categorically excluded actions may need to be evaluated as a whole if they have a net effect that warrants further environmental analysis (e.g., ITS projects throughout a corridor).

Some commenters including the Michigan DOT, the AASHTO and others requested that advance right-of-way acquisition be added to the categorical exclusion list. The U.S. EPA was concerned about coordinating any expansions of the list with other Federal agencies and was particularly concerned about wetlands mitigation needs. The Ohio DOT suggested that rather than expand the list of categorical exclusions, our agencies develop "thresholds of significance" whereby projects within those thresholds would be those considered for categorical exclusions. Finally, a number of commenters, including the Ventura County Transportation Commission, the ARTBA, and the Oregon DOT supported the categorical exclusion of transportation enhancement activities and suggested categorically excluding congestion mitigation and air quality program (CMAQ) eligible projects. We have considered these comments in devising the proposed list. Nevertheless, we invite comment on these suggestions and on the appropriateness of the activities proposed to be categorically excluded, including whether or not specific activities should be included in the list under paragraph (c) or the list under paragraph (d). We encourage commenters to provide examples or information drawn from their

experience bearing on the appropriateness of the proposed categorical exclusions. We also invite comments on the practice, begun with the 1987 regulation, of using an open-ended list of examples of activities that can be categorically excluded only after appropriate documentation has been prepared and approved on a case-by-case basis by the USDOT agency.

Section 1420.313 Environmental Assessments

Current § 771.119 would be redesignated as § 1420.313 with some minor editing changes.

Section 1420.315 Findings of No Significant Impact

Current § 771.121 would be redesignated as § 1420.121 with minor editing changes.

Section 1420.317 Draft Environmental Impact Statements

The proposed section would revise the current § 771.123 by expanding the description of both public involvement procedures and the information products developed in accordance to the proposed 23 CFR part 1410. Paragraph (b) would specifically indicate that the scoping process must consider the results of the planning process including public involvement and interagency coordination. Items related to mitigation would be expanded to include environmental enhancements. Paragraph (b) would now emphasize public involvement and interagency coordination. Paragraph (c) would add language to our goals and policies in terms of implementing NEPA. The discussion on the use of consultants in the development of the draft EIS would be removed to avoid repetition with proposed § 1420.301.

Section 1420.319 Final Environmental Impact Statements

Current § 771.125 would be redesignated as § 1420.319. Information would be added in paragraph (a)(1) to require any additional environmental studies, public involvement, and/or coordination to consider refinements of alternatives and mitigation to be presented in the FEIS.

Section 1420.321 Record of Decision

Current § 771.127 would be redesignated as § 1420.321. In paragraph (a), the information about preparation of the notice of availability would be expanded to indicate where and to whom the notice should be provided. In paragraph (c), wording would be added to emphasize that mitigation and enhancement features associated with the selected alternative become enforceable conditions of any U.S. DOT actions.

Section 1420.323 Re-evaluations

Current § 771.129 would be redesignated as § 1420.323. Paragraphs (a) through (c) are essentially unchanged from the current regulation. Paragraph (d) has been added to ensure public involvement and interagency coordination when the situation warrants. Guidance will be provided on this subject. We invite comment on how effective the proposed reevaluation provision would be in addressing projects which are implemented over an extended period of time, with construction occurring under multiple contracts. We also invite comment on the appropriate role of public involvement in reevaluations.

Section 1420.325 Supplemental Environmental Impact Statements

Current § 771.130 would be redesignated as § 1420.325. It is essentially unchanged from the current regulation except that supplementation now includes consideration of public involvement and interagency coordination.

Section-by-Section Analysis of the Proposed Rule on Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites

For ease of reference, a distribution table is provided for the current sections and proposed sections as follows:

Current Section	Proposed Section	
None	1430.101	Purpose.
771.109(a)(1) and(2) and part of 771.135(b)	1430.105	Applicability.
771.135(a)	1430.103	Mandate.
771.135(c) and (e)	1430.109	Significance.
771.135(p)(1),(2),(4), and (7)	1430.107	Use of land.
771.135(d),(f),(g),(h), and (p)(5)	1430.111	Exceptions.
771.135(a)(2), part of (b), part of (i), (j),(k),(l),(p)(3), and (p)(6)	1430.113	Evaluations under NEPA.
771.135(m) and (o)	1430.115	Separate evaluations.
771.135(i)[last sentence]	1430.117	Programmatic evaluations.
771.135(o)	1430.119	Linkage to planning.
None	1430.121	Definitions.

Section 1430.101 Purpose

This new section would be added to state that this regulation implements 49 U.S.C. 303 and 23 U.S.C. 138 (section 4(f)).

Section 1430.103 Mandate

Current § 771.135(a)(1) would be redesignated as § 1430.103 without substantive change in text.

Section 1430.105 Applicability

Current §§ 771.109(a)(1) and (2) provide the basis for this proposed section. Also, part of § 771.135(b) would be incorporated to make clear that the U.S. DOT agency decides the applicability of section 4(f).

Section 1430.107 Use of Land

Current § 771.135(p)(1), (2), (4), and (7) would be redesignated as § 1430.107 without substantive change.

Section 1430.109 Significance of the Section 4(f) Resource

Current § 135(c) and (e) would be redesignated as § 1430.109 without substantive change.

Section 1430.111 Exceptions

Current § 771.135(d), (g), (h), and (p)(5) would be redesignated as § 1430.111 without substantive change. The proposed section also incorporates the current § 771.135(f), except that the consultation requirement has been modified to be consistent with the new 36 CFR part 800 recently published by the Advisory Council on Historic Preservation. As proposed, the provision is silent with respect to the relationship between "adverse effects" under 36 CFR part 800 and "constructive use" under this regulation. We invite comment as to whether or not a specific relationship should be established in this regulation. We also invite comment as to other measures that we might take to better

coordinate the section 4(f) process with the process established under 36 CFR 800. The proposed section also has three new provisions in paragraphs (a), (b), and (c), stating that section 4(f) would not apply to park roads, parkways, trails, transportation enhancement activities, and transit enhancements where the purpose of the U.S. DOT agency approval of transportation funding is to improve the section 4(f) resource.

Section 1430.113 Section 4(f) Evaluations and Determinations Under the NEPA Umbrella

Current § 771.135(a)(2), (j), (k), (l), (p)(3), (p)(6), most of (i), and part of (b) would be redesignated as § 1430.113 without substantive change. The proposed section also would include a new provision in proposed paragraph (b) allowing consideration of the products of the planning process in the section 4(f) evaluation. Both the current and proposed regulation continue to codify in regulation language of the Supreme Court decision in Overton Park (401 U.S. 402 (1971)) that an avoidance alternative must be preferred unless the evaluation demonstrates that there are "unique problems or unusual features associated with it, or that the cost, the social, economical, or environmental impacts, or the community disruption resulting from such alternatives reach extraordinary magnitudes." We invite comment on whether or not this standard deserves further definition in regulation or in guidance in light of changes to the highway program in the years since the court's decision. In particular, we would appreciate views on whether or not the qualitative importance or value of the section 4(f) resource should be explicitly taken into account in determining whether or not an avoidance alternative is "feasible and prudent," especially when balancing the impacts of the various alternatives.

Section 1430.115 Separate Section 4(f) Evaluations

Current § 771.135(m) and (n) would be redesignated as § 1430.115 without substantive change.

Section 1430.117 Programmatic Section 4(f) Evaluations

The last sentence of current § 771.135(i) would be redesignated as § 1430.117, including a new explanatory introductory sentence. The proposed provision would provide a clear regulatory basis for programmatic section 4(f) evaluations and approvals, a practice which the Department of Transportation has used from time to time. For example, programmatic section 4(f) evaluations have been prepared for the following situations: Bikeways, historic bridges, projects involving minimal use of property for historic properties and projects involving minimal use of parkland. We invite suggestions of additional situations that would be appropriate subjects of future programmatic section 4(f) evaluations.

Section 1430.119 Linkage with Transportation Planning

Current § 771.135(o) would be redesignated as § 1430.119 and would remain substantively unchanged except that the concept of a preliminary section 4(f) evaluation has been extended to the planning process in exactly the same way it previously applied to first-tier EISs.

Section 1430.121 Definitions

A new § 1430.121 would be added to provide a consistent set of definitions of terms used in the planning regulations (23 CFR part 1410), the NEPA regulation (23 CFR part 1420), and this regulation (23 CFR part 1430).

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address or via the electronic addresses provided above. The FHWA and the FTA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA and the FTA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA and the FTA will also continue to file in the docket relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

We have determined that this proposed action is a significant regulatory action within the meaning of Executive Order 12866, and under the Department of Transportation regulatory policies and procedures because of substantial State, local government, congressional, and public interest. These interests involve receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. We anticipate that the economic impact of this rulemaking will be minimal. Most costs associated with these rules are attributable to the provisions of the TEA–21, the ISTEA, the Clean Air Act (as amended), and other statutes including earlier highway acts.

We consider this proposal to be a means to simplify, clarify, and reorganize existing regulatory requirements. There have been no changes to NEPA or CEQ regulations. These rules would merely revise existing NEPA regulations of the FHWA and the FTA and conform those regulations to the environmental streamlining requirements of TEA–21. In response to congressional direction in TEA–21, the U.S. DOT is proposing to implement improved coordinated environmental review processes for highway and transit projects. States have been carrying out statewide transportation planning activities with title 23, U.S.C., and FTA planning and research funds for many years. Neither the individual nor the cumulative impact of this action would be significant because this action would not alter the funding levels available to the States for Federal or federally-assisted programs covered by the TEA–21.

The amendments impose no additional requirements. The environmental streamlining process under section 1309 of TEA–21 establishes coordinated environmental review processes by which U.S. DOT would work with other Federal agencies to assure that major highway and transit projects are advanced according to cooperatively determined time frames. Such processes have been incorporated into a memorandum of understanding between U.S. DOT and other Federal agencies.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), we have evaluated the effects of this rule on small entities, such as local governments and businesses. The TEA–21 provides the flexibility for these agencies to provide the resources necessary to meet any time limits established under environmental streamlining. Additionally, the FHWA has issued guidance concerning transportation funding for Federal agency coordination using a full range of options for reimbursement under appropriate authorities. Accordingly, the FHWA and the FTA certify that this action would not have a significant economic impact on a substantial

number of small entities. This proposed action would merely update and clarify existing procedures. We specifically invite comments on the projected economic impact of this proposal, and will actively consider such information before completing our Regulatory Flexibility Act analysis when adopting final rules.

Environmental Impacts

We have also analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and preliminarily conclude that this action would not have any effect on the quality of the human and natural environment and is therefore categorically excluded under 23 CFR 771.117(c)(20). The TEA–21 directs the implementation of a coordinated environmental review process for highway construction projects, yet, also ensures that such concurrent review shall not result in a significant adverse impact to the environment or substantively alter the operation of Federal law. Time periods for review shall be consistent with time periods established by the Council on Environmental Quality under 40 CFR 1501.8 and 1506.10. As stated in the TEA–21, nothing in section 1309 (the environmental streamlining section) shall affect the applicability of NEPA or any other Federal environmental statute or affect the responsibility of any Federal officer to comply with or enforce any such statute.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect or sufficient Federalism implications on States and local governments that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. The TEA–21 directs the DOT to establish an integrated NEPA review and permitting process and to encourage approvals as early as possible in the scoping and planning process, yet also to maintain an emphasis on a strong environmental policy. Throughout the proposed regulation there is an effort to keep administrative burdens to a minimum.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway planning and construction (or 20.217, Motor Carrier Safety). The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Unfunded Mandates Reform Act of 1995

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

Paperwork Reduction Act

This proposal contains no new collection of information requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This notice of proposed rulemaking would encourage the coordination of approvals by Federal agencies involved in the NEPA process and could reduce the level of recordkeeping.

The information prepared by non-Federal parties pursuant to this proposed regulation is exempt from the requirements of the Paperwork Reduction Act. First, the collection of information does not entail reporting of information in response to identical questions. NEPA documents do not involve answering specific questions; they address issues relating to the requirements of multiple Federal environmental statutes. There are too many variables relating to the proposed action, the location in which the action is to be taken, and the statutes that are implicated (and to what extent) to permit a standardized format or content. The issues to be addressed in NEPA documents are therefore determined on a case by case basis. Each is a one of a kind document.

Second, the information is not requested of non-Federal entities but of Federal agencies. The State and local transportation departments and transit agencies compiling information are voluntarily serving as consultants to FHWA and FTA for their own convenience. As the proposers of the actions subject to NEPA, and the owners, operators, and maintainers of the resulting facility, and key decisionmakers regarding the choices involved in project development, it is easier for them to prepare the NEPA documents. Information is not requested of outside entities except within the PRA exception relating to "facts or opinions submitted in response from general solicitations of comments for the general public (5 CFR 1320.3(h)(4)."

Third, State and local departments of transportation and transit agencies develop this information reported to FHWA/FTA as a normal part of doing business. NEPA documents contain engineering and environmental information that is integral to developing projects in a way that conforms to State and local laws. The development of engineering and environmental information is an unavoidable step in project development whether or not the Federal government is involved. We invite comments on this analysis.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Regulation Identification Number

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

List of Subjects

23 CFR Part 771

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Public lands, Recreation areas, Reporting and recordkeeping requirements.

23 CFR Part 1420

Environmental impact statements, Grant programs—transportation, Highways and roads, Mass

transportation, Reporting and recordkeeping requirements.

23 CFR Part 1430

Environmental protection, Grant programs—transportation, Highways and roads, Historic preservation, Mass transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements.

49 CFR Part 623

Environmental protection, Grant programs—transportation, Mass Transportation, Public lands, Recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Federal Highway Administration

23 CFR Chapter I

For reasons set forth in the preamble, and under the authority of 23 U.S.C. 109, 128, 134, 138, and 315, the Federal Highway Administration proposes to amend Chapter I of title 23, Code of Federal Regulations, as follows:

PART 771—[REMOVED]

1. Remove part 771.

23 CFR Chapter IV

For reasons set forth in the preamble, the Federal Highway Administration and the Federal Transit Administration propose to amend proposed Chapter IV in title 23, Code of Federal Regulations (published elsewhere in this **Federal Register**), as set forth below:

2. Add parts 1420 and 1430 to read as follows:

PART 1420—NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING

Subpart A—Purpose, Policy, and Mandate

Sec.

Subpart B—Program and Project Streamlining

Subpart C—Process and Documentation Requirements

Subpart D—Definitions

Authority: 23 U.S.C. 109, 128, 134, 138 and 315; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324 (b) and (c); 49 CFR 1.48, and 1.51; 33 CFR 115.60(b); 40 CFR parts 1500–1508.

Subpart A—Purpose, Policy, and Mandate

§ 1420.101 Purpose.

The purpose of this part is to establish policies and procedures of the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) for implementing the National Environmental Policy Act of 1969 (NEPA) as amended, and to supplement the regulation of the Council on Environmental Quality (CEQ), 40 CFR parts 1500 through 1508. In concert with 23 CFR 1410 this part sets forth a NEPA process that integrates and streamlines the compliance with all applicable transportation and environmental laws that govern Federal transportation decisionmaking.

§ 1420.103 Relationship of this regulation to the CEQ regulation and other guidance.

The CEQ regulation lays out NEPA responsibilities for all Federal agencies. This FHWA/FTA regulation supplements the CEQ regulation with specific provisions regarding the FHWA/FTA approach to implementing NEPA for the Federal surface transportation actions under their jurisdiction. For a full understanding of NEPA responsibilities relative to the FHWA/FTA actions, the reader must refer to both this regulation and the CEQ regulation. In addition, the FHWA/FTA will rely on nonregulatory guidance materials, training courses, and documentation of best practices in the management of their NEPA responsibilities. The available materials and training course schedules are posted on the FHWA and the FTA web sites and can be obtained by contacting Planning and Environment Program Manager, Federal Highway Administration, Washington, DC 20590 or Associate Administrator for Planning, Federal Transit Administration, Washington, DC 20590.

§ 1420.105 Applicability of this part.

(a)(1) The provisions of this part and the CEQ regulation apply to actions where a U.S. DOT agency exercises sufficient control and has the statutory authority to condition the action or approval. Actions taken by the applicant or others that do not require any U.S. DOT agency approval or over which a U.S. DOT agency has no discretion, including, but not limited to, projects or maintenance on Federal-aid highways or transit systems not involving Federal-aid funds or approvals, and actions from which the U.S. DOT agency are excluded by law or regulation, are not subject to this part.

(2) This part does not apply to, or alter approvals by the U.S. DOT agencies made prior to the effective date of this part.

(3) NEPA documents accepted or prepared by the U.S. DOT agency after the effective date of this part shall be developed in accordance with this part.

(b) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the actions covered by each environmental impact statement (EIS) or environmental assessment (EA), or designated a categorical exclusion (CE) shall:

(1) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made;

(2) Connect logical termini, if linear in configuration, and be of sufficient length or size to address environmental matters over a sufficiently wide area that all reasonably foreseeable impacts are considered; and

(3) Not restrict consideration of alternatives for other reasonably

foreseeable transportation improvements.

§ 1420.107 Goals of the NEPA process.

(a) It is the intent of the U.S. DOT agencies that the NEPA principles of environmental stewardship and the Transportation Equity Act for the 21st Century (TEA–21) objective of timely implementation of transportation facilities and provision of transportation services should guide Federal, State, local, and tribal decisionmaking on all transportation actions subject to these laws. Accordingly, in administering their responsibilities under numerous transportation and environmental laws, the U.S. DOT agencies will manage the NEPA process to maximize attainment of the following goals:

(1) *Environmental ethic.* Federal actions reflect concern for, and responsible choices that preserve, communities and the natural environment, in accordance with the purpose and policy direction of NEPA (42 U.S.C. 4321 and 4331), and the specific mandates of statutes, regulations, and executive orders.

(2) *Environmental justice.* Disproportionate adverse effects on minority and low income populations are identified and addressed; no person, because of handicap, age, race, color, sex, or national origin, is excluded from participating in, denied the benefits of, or subject to discrimination under any U.S. DOT agency program or activity conducted in accordance with this regulation.

(3) *Integrated decisionmaking.* Federal transportation approvals are coordinated in a logical fashion with other Federal reviews and approvals, and with State, local, and tribal governmental actions, and actions by private entities, in recognition of interdependencies of decisions by the various parties and the procedural umbrella that the NEPA process provides for facilitating decisionmaking.

(4) *Environmental streamlining.* Federal transportation and environmental reviews and approvals are completed in a timely fashion through a coordinated review process.

(5) *Collaboration.* Transportation decisions are made through a collaborative partnership involving Federal, State, local, and tribal agencies, communities, interest groups, private businesses, and interested individuals.

(6) *Transportation problem solving.* Transportation decisions represent cost effective solutions to current and future problems based on an interdisciplinary evaluation of alternative courses of action.

(7) *Financial stewardship.* Public funds are used to achieve the maximum benefit for the financial investment in accordance with governing statutes and regulations.

§ 1420.109 The NEPA umbrella.

(a) In keeping with the above goals, it is the policy of the FHWA/FTA that the NEPA process be the means of bringing together all legal responsibilities, issues, and interests relevant to the transportation decision in a logical way to evaluate alternative courses of action, and that it lead to a single final decision regarding the key characteristics of a proposed action (such as, location, major design features, mitigation measures, and environmental enhancements). This decision shall be made in the best overall public interest based on a balanced consideration of the need for safe and efficient transportation; the social, economic, and environmental benefits and impacts of the proposed action; and the attainment of national, State, tribal, and local environmental protection goals.

(b) Any environmentally related study, review, or consultation required by Federal law should be conducted within the framework of the NEPA process to assure integrated and efficient decisionmaking. The State is encouraged to conduct its activities during the NEPA process toward the same goal.

(c) Federal responsibilities to be addressed in the NEPA process whenever applicable to the decision on the proposed action include, but are not limited to the following protections of:

(1) *Individual rights:*

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) and related statutes;

(ii) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), as amended;

(iii) Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*);

(iv) 49 U.S.C. 5332, nondiscrimination;

(v) 49 U.S.C. 5324(a), relocation requirements;

(vi) 23 U.S.C. 128 and 49 U.S.C. 5323(b), public hearing requirements;

(2) *Communities and community resources:*

(i) Executive Order 12898 (59 FR 7629, 3 CFR, 1995 comp., p. 859), environmental justice for minority and low-income populations;

(ii) 49 U.S.C. 303, protection of public parks and recreation areas;

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) 23 U.S.C. 109(i), highway noise standards;

(vi) Clean Air Act (23 U.S.C. 109(j), 42 U.S.C. 7509 and 7521(a) *et seq.*), as amended;

(vii) Safe Drinking Water Act (42 U.S.C. 201 and 300);

(viii) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201–4209);

(ix) National Flood Insurance Act (42 U.S.C. 1401, 2414, 4001 to 4127);

(x) Solid Waste Disposal Act (Public Law 89–272; 42 U.S.C. 6901 *et seq.*);

(xi) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(xii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);

(xiii) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 to 11050);

(3)*Cultural resources and aesthetics:*

(i) 49 U.S.C. 303, protection of historic sites;

(ii) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) 23 U.S.C. 109(i), highway noise standards;

(vi) Clean Air Act (23 U.S.C. 109(j), 42 U.S.C. 7509 and 7521(a) *et seq.*), as amended;

(vii) Safe Drinking Water Act (42 U.S.C. 201 and 300);

(viii) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201–4209);

(ix) National Flood Insurance Act (42 U.S.C. 1401, 2414, 4001 to 4127);

(x) Solid Waste Disposal Act (Public Law 89–272; 42 U.S.C. 6901 *et seq.*);

(xi) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 *et seq.*);

(xii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*);

(xiii) Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. 11001 to 11050);

(3) *Cultural resources and aesthetics:*

(i) 49 U.S.C. 303, protection of historic sites;

(ii) National Historic Preservation Act (16 U.S.C. 470 *et seq.*);

(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;

(iv) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;

(v) Archeological and Historic Preservation Act (16 U.S.C. 469);
(vi) Archeological Resources Protection Act (16 U.S.C. 470aa to 47011);
(vii) Act for the Preservation of American Antiquities (16 U.S.C. 431 to 433);
(viii) American Indian Religious Freedom Act (42 U.S.C. 1996 *et seq.*);
(ix) Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 to 3013);
(x) 23 U.S.C. 144(o), historic bridges;
(xi) 23 U.S.C. 530, wildflowers;
(xii) 23 U.S.C. 131, 136, 319, highway beautification;
(4) *Waters and water-related resources:*
(i) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;
(ii) 49 U.S.C. 5324(b), economic, social, and environmental effects of transit;
(iii) Federal Water Pollution Act, as amended (33 U.S.C. 1251 to 1376);
(iv) Wild and Scenic Rivers Act (16 U.S.C. 1271 to 1287);
(v) Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460);
(vi) Water Bank Act (16 U.S.C. 1301 to 1311);
(vii) Executive Order 11990 (42 FR 26961; 3 CFR, 1977 comp., p. 121), protection of wetlands; ,
(viii) Emergency Wetlands Resources Act of 1986 (16 U.S.C. 3921 to 3931);
(ix) Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*);
(x) Executive Orders 11988 (42 FR 26951; 3 CFR, 1977 comp., p. 1171) and 12148 (44 FR 43239; 3 CFR, 1979 comp., p. 412), floodplain management;
(5) *Wildlife, plants and natural areas:*
(i) Endangered Species Act of 1973 (7 U.S.C. 136, 16 U.S.C. 1531 to 1543);
(ii) 49 U.S.C. 303, protection of wildlife and waterfowl refuges;
(iii) 23 U.S.C. 109(h), economic, social, and environmental effects of highways;
(iv) 9 U.S.C. 5324(b), economic, social, and environmental effects of transit;
(v) Marine Protection Research and Sanctuaries Act of 1972 (16 U.S.C. 1431 to 1445, 33 U.S.C. 1401 to 1445);
(vi) Fish and Wildlife Coordination Act (16 U.S.C. 661 to 666);
(vii) Wilderness Act (16 U.S.C. 1131 to 1136);
(viii) Wild and Scenic Rivers Act (16 U.S.C. 1271 to 1287);
(ix) Coastal Zone Management Act of 1972 (16 U.S.C. 1451 to 1464);
(x) Coastal Barrier Resources Act (16 U.S.C. 3501 to 3510, 42 U.S.C. 4028);
(xi) National Trails System Act (16 U.S.C. 1241 to 1249);
(xii) Executive Order 13112 (64 FR 6183), Invasive Species.

§ 1420.111 Environmental justice.

(a) In accordance with the goals established in Executive Order 12898, as implemented by DOT Order 5610.2 and the FHWA Order 6640.23,[1] and the requirements of the Civil Rights Act of 1964, Title VI, and its implementing regulations, proposed actions shall be developed in a manner to avoid or mitigate disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, on low income populations and minority populations. Adverse effects can include a denial of or reduction in benefits.

(b) In performing an environmental analysis of proposed actions, applicants must analyze data necessary to determine whether the actions will have disproportionately high and adverse effects on low income and minority communities. When disproportionately high and adverse effects are found, the applicant must identify measures to address these disproportionate effects, including actions to avoid or mitigate them, or it must explain and justify why such measures cannot be taken.

(c) The findings and determinations made pursuant to paragraphs (a) and (b) of this section must be documented as part of the NEPA document prepared for the proposed action, or in a supplemental document if the NEPA process has been completed.

(d) In accordance with Executive Order 12898, DOT Order 5610.2, and the FHWA Order 6640.23, nothing in this section is intended to, nor shall create, any right to judicial review of any action taken by the agency, its officers or its recipients taken under this section to comply with such Orders.

§ 1420.113 Avoidance, minimization, mitigation, and enhancement responsibilities.

(a) In accordance with the goals established in § 1420.107, it is the policy of the FHWA and the FTA that proposed actions be developed as described in this section, to the fullest extent practicable. For the purposes of this section, "practicable" means a common sense balancing of environmental values with safety, transportation need, costs, and other relevant factors in decisionmaking. No additional findings or paperwork are required.

(1) Adverse social, economic, and environmental impacts to the affected human communities and the natural environment should be avoided.

(2) Where adverse impacts cannot be avoided, proposed measures should be developed to minimize adverse impacts.

(3) Measures necessary to mitigate unavoidable adverse impacts be incorporated into the action, or should be part of a mitigation program completed in advance of the action.

(4) Environmental enhancements should be evaluated and incorporated into the action as appropriate.

(b) Mitigation measures and environmental enhancements shall be eligible for Federal funding to the fullest extent authorized by law.

(c) NEPA commitments.

(1) It shall be the responsibility of the applicant in cooperation with the U.S. DOT agency to implement those mitigation measures and environmental enhancements, stated as commitments in the final EIS/ROD, EA/FONSI, or CE prepared or supplemented pursuant to this regulation, unless the commitment is modified or eliminated in a supplemental final EIS/ROD, EA/FONSI or CE, or re-evaluation approved by the U.S. DOT agency.

(2) If a final EIS/ROD, EA/FONSI, CE, or other U.S. DOT agency approval commits to coordination with another agency during the final design and construction phase, or during the operational phase of the action, the applicant is responsible for such coordination, unless the commitment is removed in a supplemental final EIS/ROD, EA/FONSI or CE, or re-evaluation approved by the U.S. DOT agency.

Subpart B—Program and Project Streamlining

§ 1420.201 Relationship of planning and project development processes.

(a) The planning products described in § 1410.318 shall be considered early in the NEPA process. The FTA and the FHWA encourage all Federal, State and local agencies with project level responsibilities for investments included in a transportation plan to participate in the planning process so as to maximize the usefulness of the planning products for the NEPA process and eliminate duplication.

(b) Applicants preparing documents under this part shall, to the maximum extent useful and practicable, incorporate and utilize analyses, studies, documents, and other sources of information developed during the transportation planning processes of 23 CFR part 1410 and other planning processes in satisfying the requirements of the NEPA process. The provisions of 40 CFR 1502.21 (incorporation by reference) will be used as appropriate.

[1] These documents are available for inspection and copying as prescribed at 49 CFR part 7.

(c) During scoping for an EIS or early coordination for an environmental assessment, the U.S. DOT agency and the applicant shall, in consultation with the transportation planning agencies responsible for inclusion of the project in the metropolitan (if applicable) and statewide plan and program, review the record of previously completed planning activities, including any existing statement of purpose and need and evaluation of alternatives. Where the U.S. DOT agency, in cooperation with the applicant, determines that planning decisions are adequately supported, the detailed evaluation of alternatives required under § 1420.313(b) or § 1420.317(c) may be limited to the no action and reasonable alternatives requiring further consideration. In deciding which of the evaluations and conclusions of the planning process are adequately supported and may be incorporated during the NEPA process, the U.S. DOT agency and the applicant shall take into account the following:

(1) The validity and completeness of the supporting analyses,

(2) The public involvement process associated with those planning products,

(3) The degree of coordination with Federal, State, and local resource agencies with interest in or authority over the ultimate action(s); and

(4) The level of formal endorsement of the analyses and conclusions by participants in the planning process.

§ 1420.203 Environmental streamlining.

(a) For highway and mass transit projects requiring an environmental impact statement, an environmental assessment, or an environmental review, analysis, opinion, or environmental permit, license, or approval by operation of Federal law, as lead Federal agency, the U.S. DOT agency, in cooperation with the applicant, shall perform the following:

(1) Consult with the applicant regarding the issues involved, the likely Federal involvement, and project timing.

(2) Early in the NEPA process, contact Federal agencies likely to be involved in the proposed action to verify the nature of their involvement and to discuss issues, methodologies, information requirements, time frames and constraints associated with their involvement.

(3) Identify and use the appropriate means listed in 40 CFR 1500.4 and 1500.5 for reducing paperwork and reducing delay.

(4) Document the results of such consultation and distribute to the appropriate Federal agencies for their concurrence, identifying at a minimum the following:

(i) Federal reviews and approvals needed for the action,

(ii) Those issues to be addressed in the NEPA process and those that need no further evaluation,

(iii) Methodologies to be employed in the conduct of the NEPA process,

(iv) Proposed agency and public involvement processes, and

(v) A process schedule.

(5) Identify, during the course of completing the NEPA process, points of interagency disagreement causing delay and immediately take informal measures to resolve or reduce delay. If these measures are not successful in a reasonable time, the U.S. DOT agency shall initiate a dispute resolution process pursuant to section 1309 of the TEA–21.

(b) A State may request that all State agencies with environmental review or approval responsibilities be included in the coordinated environmental review process and, with the consent of the U.S. DOT agency, establish an appropriate means to assure that Federal and State environmental reviews and approvals are fully coordinated.

(c) At the request of the applicant, the coordinated environmental review process need not be applied to an action not requiring an environmental impact statement.

(d) In accordance with the CEQ regulations on reducing paperwork (40 CFR 1500.4), NEPA documents prepared by DOT agencies need not devote paper to impact areas and issues that are not implicated in the proposed action and need not make explicit findings on such issues.

§ 1420.205 Programmatic approvals.

(a) Nothing in this part shall prohibit the U.S. DOT agency from making approvals which apply to future actions consistent with the conditions established for such programmatic approvals.

(b) Applicants shall cooperate with the U.S. DOT agency in conducting program evaluations to ensure that such programmatic approvals are being properly applied.

§ 1420.207 Quality assurance process.

(a) The FHWA and the FTA shall institute a process to assure that actions subject to this part meet or exceed legal requirements and are processed in a timely manner.

(b) For actions processed with an environmental impact statement, this process shall include a legal sufficiency review and may require the prior concurrence of the Headquarters office in accordance with procedures established by the FTA and the FHWA.

§ 1420.209 Alternate procedures.

(a) An applicant may propose to the U.S. DOT agency alternative procedures for complying with the intent of this part with respect to its actions.

(b) The U.S. DOT agency shall publish such alternative procedures in the **Federal Register** for notice and comment and shall consult with the CEQ pursuant to 40 CFR 1507.3.

(c) After taking into account comments received, and negotiating with the applicant appropriate changes to such alternative procedures, the U.S. DOT agency shall approve such alternative procedures only after making a finding that the alternative procedures will be fully effective at complying with NEPA and related responsibilities.

§ 1420.211 Use of this part by other U.S. DOT agencies.

As authorized by the Secretary, other U.S. DOT agencies may use this part for specific actions or categories of actions under their jurisdiction.

§ 1420.213 Emergency action procedures.

Requests for deviations from the procedures in this part because of emergency circumstances shall be referred to the U.S. DOT agency for evaluation and decision in consultation with the CEQ in accordance with 40 CFR 1506.11.

Subpart C—Process and Documentation Requirements

§ 1420.301 Responsibilities of the participating parties.

(a) The CEQ regulation establishes rules for lead agencies (40 CFR 1501.5) and cooperating agencies (40 CFR 1501.6). It also encourages Federal agencies to cooperate with State and local agencies to eliminate duplication (40 CFR 1506.2) and defines the relationship between Federal agencies, applicants, and contractors (40 CFR 1506.5).

(b) For actions on Federal lands that are developed directly by the U.S. DOT agency in cooperation with the Federal land management agency, responsibilities for management of the NEPA process shall be as established by interagency agreement or procedure.

(c) Use of contractors.

(1) The U.S. DOT agency or an applicant may select and use contractors, in accordance with applicable contracting procedures, and the provisions of 40 CFR 1506.5(c), in support of their respective roles in the NEPA process. An applicant which is a

State agency with statewide jurisdiction may select a contractor to assist in the preparation of an EIS. Where the applicant is not a State agency with statewide jurisdiction, the applicant may select a contractor, after coordination with the U.S. DOT agency to assure compliance with 40 CFR 1506.5(c) relative to conflict of interest. Contractors that have a role in the actual writing of a NEPA document shall execute a disclosure statement in accordance with 40 CFR 1506.5(c), specifying that such contractor has no financial or other interest in the outcome of the action (other than engineering with the exception allowed by paragraph (c)(2) of this section, if applicable), and will not acquire such an interest prior to the approval of the final NEPA document by the U.S. DOT agency or the termination of the contractor's involvement in writing the NEPA document, whichever occurs first.

(2) A State may procure the services of a consultant, under a single contract, for environmental impact assessment and subsequent engineering and design work, provided that the State conducts a review that assesses the objectivity of the NEPA work in accordance with the provisions of 23 U.S.C. 112(g).

§ 1420.303 Interagency coordination.

(a) Interagency coordination during the NEPA process involves the early and continuing exchange of information with interested Federal, State, local public agencies, and tribal governments. Interagency coordination should begin early as part of the planning process and continue through project development, the preparation of an appropriate NEPA document, and, by agreement, into the implementation stage of the action. Interested agencies include those that express a continuing interest in any aspect of the actions during the planning process and project development processes. They include those agencies whose jurisdiction, responsibilities, or expertise may involve any aspect of the action or its alternatives. The purpose of interagency coordination is to aid in determining the class of action, the scope of the NEPA document, the identification of key issues, the appropriate level of analysis, methods of avoidance, minimization, and mitigation of adverse impact, opportunities for environmental enhancement, and related environmental requirements. Coordination early in the NEPA process must extend beyond agencies consulted during the planning process to those agencies whose interest begins only when preliminary designs of alternative actions are being developed. The appropriate frequency and timing of coordination with a particular agency will depend on the interests of the agency consulted.

(b) Federal land management entities, neighboring States, and tribal governments, that may be significantly affected by the action or by any of the alternatives shall be notified early in the NEPA process and their views solicited by the applicant in cooperation with the U.S. DOT agency.

(c) Upon U.S. DOT agency written approval of an EA, FONSI, separate section 4(f) determination, or CE designation, the applicant shall send a notice of availability of the approved document, or a copy of the approved document itself, to the affected units of Federal, State, and local government. The notice shall briefly describe the action and its location and impacts. Cooperating agencies shall be provided a copy of the approved document.

§ 1420.305 Public involvement.

(a) The applicant must have a continuing program of public involvement which actively encourages and facilitates the participation of transportation and environmental interest groups, citizens groups, private businesses, and the general public including minority and low income populations through a wide range of techniques for communicating and exchanging information. The applicant shall use the products of the public involvement process developed during planning pursuant to 23 CFR 1410.212 and 1410.316, whenever such information is reasonably available and relevant, to provide continuity between the public involvement programs.

(b) Each applicant developing projects under this part must adopt written procedures to carry out the public involvement requirements of this section and 40 CFR 1506.6, and, as appropriate, 23 U.S.C. 128, and 49 U.S.C. 5323(b) and 5324(b). The applicant's public involvement procedures shall apply to all classes of action as described in § 1420.309 and shall be developed in cooperation with other transportation agencies with jurisdiction in the same area, so that, to the maximum extent practicable, the public is presented with a consistent set of procedures that do not vary with the transportation mode of the proposed action or with the phase of project development. Where two or more involved parties have separate established procedures, a cooperative process for determining the appropriate public involvement activities and their consistency with the separate agency's procedures will be cooperatively established.

(c) Public involvement procedures must provide for the following:

(1) Coordination of public involvement activities with the entire NEPA process and, when appropriate, with the planning process. The procedures also must provide for coordination and information required to comply with public involvement requirements of other related laws, executive orders, and regulations;

(2) Early and continuing opportunities for the public to be informed about, and involved in the identification of social, economic, and environmental impacts and impacts associated with relocation of individuals, groups, or institutions;

(3) The use of an appropriate variety of public involvement activities, techniques, meeting and hearing formats, and notification media;

(4) A scoping process that satisfies the requirements of 40 CFR 1501.7;

(5) One or more public hearings or the opportunity for hearing(s) to be held at a convenient time and place that encourage public participation, for any project which requires the relocation of substantial numbers of people, substantially changes the layout or functions of connecting transportation facilities or of the facility being improved, has a substantial adverse impact on abutting property, substantially affects a community or its mass transportation service, otherwise has a substantial social, economic, environmental or other effect, or for which the U.S. DOT agency determines that a public hearing is in the public interest;

(6) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing where a hearing is determined appropriate. Such notice shall indicate the availability of explanatory information;

(7) Where appropriate, the submission to the U.S. DOT agency of a transcript of each public hearing and a certification (pursuant to 23 U.S.C. 128 or 49 U.S.C. 5324(b)(2)) that a required hearing or hearing opportunity was offered. The transcript should be accompanied by copies of all written statements from the public, submitted either at the public hearing or during an announced period after the public hearing;

(8) Specific procedures for complying with the public and agency involvement and notification requirements for the following: EAs, Findings of no significant impact (FONSI), Draft EISs, Final EISs, and Records of decision (ROD);

(9) Reasonable accommodations for participation by persons with disabilities, including, upon request, the provision of auxiliary aids and services for understanding speakers at meetings and environmental documents.

(d) Where a re-evaluation of NEPA documents is required pursuant to § 1420.323, the U.S. DOT agency and the applicant will determine whether changes in the project or new information warrant additional public involvement.

(e) A minimum public comment period of 45 days shall be provided prior to the initial adoption or substantial revision of public involvement procedures.

(f) Public involvement procedures in effect as of the date of this part remain valid, but will be reviewed periodically for effectiveness.

§ 1420.307 Project development and timing of activities.

(a) The FHWA and/or the FTA will not approve the initiation and will not authorize funding for final design activities, property acquisition (except the types of advance land acquisitions described in § 1420.311(d)(16)), purchase of construction materials or transit vehicles, or construction, until the following have been completed:

(1)(i) The action has been classified as a categorical exclusion (CE), or

(ii) A FONSI has been approved, or

(iii) A final EIS has been approved, made available for the prescribed period of time, and a record of decision has been signed;

(2) The U.S. DOT agency has received transcripts of public hearings held, and any required certifications that a hearing or opportunity for a hearing was provided; and

(3) The planning and programming requirements of 23 CFR part 1410 have been met.

(b) Before completion of the NEPA document, if it becomes apparent that the preferred alternative will not be consistent with the design concept and scope of the action identified in the relevant plan and TIP, the applicant shall immediately notify the State agency responsible for the State TIP, and, in metropolitan areas, the MPO, so that the planning and programming requirements of 23 CFR part 1410 can be satisfied prior to the approval of a final EIS, Record of Decision, FONSI or CE.

(c) Compliance with the requirements of all applicable environmental laws, regulations, executive orders, and other related requirements as set forth in § 1420.109 should be completed prior to the approval of the final EIS, FONSI, or the CE designation. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. However, full compliance with the U.S. EPA's conformity regulation at 40 CFR parts 51 and 93 is required prior to the approval of the ROD, FONSI or CE designation. Approval of the NEPA document constitutes adoption of DOT agency findings and determinations that are contained therein unless otherwise specified. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128. The FTA approval of the appropriate NEPA document indicates compliance with 49 U.S.C. 5324(b) and fulfillment of the grant application requirements of 49 U.S.C. 5323(b), if such requirements are applicable to the action.

(d) The completion of the requirements set forth in this section is considered the U.S. DOT agency's acceptance of the location of the action and design concepts described in the NEPA document unless otherwise specified by the approving official. However, such acceptance does not commit the U.S. DOT agency to approve any future grant request to fund the preferred alternative.

§ 1420.309 Classes of actions.

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions normally requiring an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) New construction or major extension of fixed rail transit facilities (e.g., rapid rail, light rail, automated guideway transit).

(4) New construction or major extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(5) New construction or major extension of an intercity railroad not located within existing railroad right-of-way.

(6) A multimodal or intermodal facility that includes or requires any of the other Class I actions.

(b) Class II (Categorical Exclusions). Actions that do not individually or cumulatively have a significant environmental impact are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in § 1420.311(c). Additional actions not listed may be designated as CEs pursuant to § 1420.311(d), if documented environmental studies demonstrate that the action would not, either individually or cumulatively, have a significant environmental impact.

(c) Class III (EAs). Actions in which the significance of the environmental impact is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate, subsequent NEPA document (i.e., Findings of no significant impact or EIS).

§ 1420.311 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and are known, on the basis of past experience with similar actions, not to involve significant environmental impacts. They are actions which: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the U.S. DOT agency, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Unique environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by 49 U.S.C. 303 (section 4(f)) or section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and § 1420.311(a) of this regulation. If other environmental laws (i.e., those listed in § 1420.109(c)) do not apply to the action, then it does not require any further NEPA approval by the U.S. DOT agency. If the U.S. DOT agency is not sure of the applicability of one of these CEs or of other environmental laws to a particular proposed action, the applicant will be

required to provide supporting documentation in accordance with paragraph (d) of this section. The following are CEs:

(1) Activities which do not involve or lead directly to construction, such as program administration (e.g., personnel actions, procurement of consulting services or office supplies); the promulgation of rules, regulations, directives, and legislative proposals; planning and technical studies; technical assistance activities; training and research programs; technology transfer activities; research activities as defined in 23 U.S.C. 501–507; archaeological planning and research; approval of a unified planning work program; development and establishment of management systems under 23 U.S.C. 303; approval of project concepts under 23 CFR part 476; preliminary engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; Federal-aid system revisions which establish classes of highways; and designation of highways to the National Highway System.

(2) Modernization of a highway by resurfacing.

(3) Routine maintenance or minor rehabilitation of existing transportation facilities, including pavements, tracks, railbeds, bridges, structures, stations, terminals, maintenance shops, storage yards, and buildings, that occurs entirely on or within the facility, where there is no change in the character and use of the facility, and no substantial disruption of service or traffic; purchase of associated capital maintenance items; preventive maintenance of transit facilities, vehicles, and other equipment.

(4) Incorporation of an Intelligent Transportation Systems (ITS) element into an existing transportation facility or service, including the development, purchase, installation, maintenance, improvement, and operation of a traveler information system, incident management and emergency response system, traffic management and control system, security system, or MAYDAY system that enables public agencies to detect and respond to emergency situations.

(5) Activities included in the State's highway safety program under 23 U.S.C. 402; enforcement of railroad safety regulations, including the issuance of emergency orders.

(6) Improvement of existing rest areas, toll collection facilities, truck weigh stations, traffic management and control centers, and vehicle emissions testing centers where no substantial land acquisition or traffic disruption will occur.

(7) Carpool and vanpool projects, as defined in 23 U.S.C. 146, if no substantial land acquisition or traffic disruption will occur.

(8) Emergency repairs of highways, roads and trails under 23 U.S.C. 125; emergency repair of transit or railroad facilities after a natural disaster or catastrophic failure.

(9) Operating assistance to transit agencies.

(10) Acquisition of buses, rail vehicles, paratransit vehicles, and transit-support vehicles, where the use of these vehicles can be accommodated by existing facilities or by new facilities which are themselves CEs.

(11) Purchase or installation of operating or maintenance equipment to be located within an existing transportation facility with no significant impacts off the site; lease of existing facilities, vehicles, or other equipment for use in providing transit services; capital cost of contracting for transit services.

(12) Bus and rail car rehabilitation, including the retrofit or replacement of vehicles for alternative fuels, where the use of these vehicles can be accommodated by existing facilities or new facilities which are themselves CEs.

(13) Improvement of existing tracks, railbeds, communications systems, signal systems, security systems, and electrical power systems when carried out within the existing right-of-way without substantial service disruption.

(14) Construction of bicycle and pedestrian lanes, paths, and facilities within existing transportation facilities or right-of-ways; installation of equipment for transporting bicycles on transit vehicles.

(15) Alterations to transportation facilities or vehicles in order to make them accessible by persons with disabilities.

(16) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, lighting, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(17) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action; approvals of disposals of excess right-of-way; transfer of surplus assets, in accordance with 49 U.S.C. 5334(g); approval of utility installations along or across a transportation facility.

(18) Landscaping, streetscaping, public art and other scenic beautification; control and removal of outdoor advertising; acquisition of scenic easements and scenic or historic sites for the purpose of preserving the site.

(19) Installation of noise barriers or other alterations to existing facilities to provide for noise reduction; alterations to existing non-historic buildings to provide for noise reduction.

(20) Contributions to statewide or regional efforts to conserve, restore, enhance, and create wetlands or wildlife habitats.

(d) Additionally, for individual proposed actions to be categorically excluded under this section, the applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied, that significant environmental effects will not result, that the applicant's public involvement process is consistent with the procedures adopted pursuant to § 1420.305, that any appropriate interagency coordination has occurred, and that any other applicable environmental laws (*e.g.*, those listed in § 1420.109(c)) have been satisfied. This demonstration may require investigations of specific areas of impact to determine whether the CE criteria are satisfied. If the DOT agency is not certain that the appropriateness of the CE has been demonstrated, additional documentation or an EA or EIS will be required of the applicant. Examples of actions for which a CE demonstration may be possible include, but are not limited to:

(1) Modernization of a highway through restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (*e.g.*, parking, weaving, turning, climbing lanes), or travel lanes in the median of an existing facility, including any such action necessary to accommodate other transportation modes on an existing facility.

(2) Transportation operational improvements, including those that use ITS, such as, freeway surveillance and control systems, traffic signal monitoring and control systems, transit management systems, electronic fare payment systems, and electronic toll collection systems.

(3) Transportation safety improvements and programs; hazard eliminations, including construction of grade separation to replace existing highway-railway grade crossings; projects to mitigate hazards caused by wildlife; and seismic retrofit of existing transportation facilities or structures.

(4) Rehabilitation or reconstruction of tunnels, bridges, and other structures, and the approaches thereto.

(5) Modification or replacement of an existing bridge on essentially the same alignment or location.

(6) Construction of parking facilities or carpool and vanpool projects that involve land acquisition and construction.

(7) Construction of new buildings to house transportation management and control centers, carpool and vanpool operations centers, or vehicle emissions testing centers.

(8) Construction of new rest areas, toll collection facilities, truck weigh stations or auto emissions testing or safety testing facilities.

(9) Approvals for changes in highway access control.

(10) Improvement of existing tracks, railbeds, communications systems, signal systems, security systems, and electrical power systems, including construction of sidings or passing tracks; extension or expansion of rail electrification on existing, operating rail lines.

(11) Construction of new bus or rail storage and maintenance facilities in undeveloped areas or areas used predominantly for industrial or transportation purposes, where such facility is compatible with existing zoning, the site is located on or near a street with adequate capacity to handle anticipated traffic, and there is no significant air or noise impact on the surrounding community.

(12) Renovation, reconstruction, or improvement of existing rail, bus, and intermodal buildings and facilities, including conversion to use by alternative-fuel vehicles.

(13) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) or intermodal transfer facilities, when located in a commercial area or other high activity center in which there is adequate street capacity for projected traffic.

(14) Rehabilitation, renovation, or improvement of existing ferry terminals, piers, and facilities.

(15) Short-term demonstrations of rail service on existing tracks.

(16) An acquisition of land or property interests that meets the criteria of paragraph (d)(16)(i), (ii) or (iii) of this section may be evaluated against the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section separately from any planned action that would use the land or property interests. Any subsequent action that would use the acquired right-of-way or property interests and would require a DOT agency action must be separately reviewed in accordance with this part prior to any construction on, or change in the land. The following types of acquisitions may qualify as CEs:

(i) Acquisition of an existing transportation right-of-way which is linear in its general configuration and is not publicly owned, such as a railroad or a private road, for the purpose of either maintaining preexisting levels of transportation service on the facility or of preserving the right-of-way for a future transportation action or transportation enhancement activity.

(ii) Acquisition of land, easements, or other property interests with the intent of preserving alternatives for a future transportation action, where the following conditions are met: The transportation action that would use the land or property interests has been specifically included in a transportation plan for the area adopted pursuant to 23 CFR part 1410 and such plan has been found by the U.S. DOT agency to conform to air quality plans in accordance with 40 CFR parts 51 and 93, if applicable; and the acquisition will not limit the evaluation of alternatives to the planned action that would use the land or property interests including shifts in alignment that may be required.

(iii) Acquisition of land or property interests for hardship or protective purposes where the following conditions are met: The transportation action that would use the land or property interests has been specifically included in a transportation plan for the area adopted pursuant to 23 CFR part 1410 and such plan has been found by the U.S. DOT agency to conform to air quality plans in accordance with 40 CFR parts 51 and 93, if applicable; the hardship and protective buying will be limited to a particular parcel or a small number of parcels related to the planned transportation action; and the acquisition will not limit the evaluation of alternatives to the planned action that would use the land or property interests, including shifts in alignment that may be required.

(17) Approvals for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(18) Construction of a bicycle transportation facility on its own, new right-of-way.

(19) Mitigation of water pollution due to storm water runoff from transportation facilities.

(20) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad or bus facilities and canals).

(21) Transportation enhancement activities and transit enhancements defined in 23 U.S.C. 101 and 49 U.S.C. 5302.

§ 1420.313 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the U.S. DOT agency for each action(s) that is not a CE and does not clearly require the preparation of an EIS, or where the U.S. DOT agency believes an EA would assist in determining the need for an EIS.

(b) The EA shall evaluate the social, economic, and environmental impacts of the proposed action, reasonable alternatives that would avoid or reduce adverse impacts, measures which would mitigate adverse impacts, and environmental enhancements if any that would aid in harmonizing the action with the surrounding community. The EA shall discuss compliance with other related environmental laws, regulations, and executive orders.

(c) The EA is subject to U.S. DOT agency approval before it is made available to the public as a U.S. DOT agency document.

(d) For actions that require an EA, the applicant, in consultation with the U.S. DOT agency, shall do the following:

(1) Conduct interagency coordination in accordance with § 1420.303, beginning at the earliest appropriate time, to advise agencies of the proposed action and to achieve the following objectives: Determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might avoid or mitigate adverse impacts; identify environmental enhancements that might aid in harmonizing the action with the surrounding community; and identify other environmental review and coordination requirements which should be performed concurrently with the EA. The results of interagency coordination to the time of EA approval by the U.S. DOT agency shall be included in the EA.

(2) Provide for public involvement in accordance with the procedures established pursuant to § 1420.305. Public involvement to the time of EA approval by the U.S. DOT agency shall be summarized in the EA.

(e) The EA need not be circulated for comment but the document must be made available for inspection in public places readily accessible to the affected community in accordance with paragraphs (f) and (g) of this section. Notice of availability of the EA, briefly describing the action(s) and its impacts, or a copy of the EA, shall be sent by the applicant to the affected units of Federal, State and local government.

(f) When, in accordance with the public involvement procedures established pursuant to § 1420.305, a public hearing on an action evaluated in an EA is held, the following shall occur:

(1) The EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing.

(2) The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed.

(3) Pursuant to 40 CFR 1501.4(c) comments shall be submitted in writing to the applicant or the U.S. DOT agency within 30 days of publication of the notice of availability of the EA unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(g) When, in accordance with the public involvement procedures established pursuant to § 1420.305, a public hearing on an action evaluated in an EA is not held, the following shall occur:

(1) The applicant shall place a notice in a newspaper(s) similar to a public hearing notice at an appropriate stage of development of the action.

(2) The notice shall advise the public of the availability of the EA, state where information concerning the action may be obtained, and invite comments from all parties with an interest in the social, economic, or environmental aspects of the action.

(3) Pursuant to 40 CFR 1501.4(c) comments shall be submitted in writing to the applicant or the U.S. DOT agency within 30 days of the publication of the notice unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(h) If no significant impacts are identified, the applicant shall consider the public and agency comments received; revise the EA as appropriate; furnish the U.S. DOT agency a copy of the revised EA, the public hearing transcript, where applicable, and copies of any comments received and responses thereto; and recommend a FONSI. The revised EA shall also document compliance, to the fullest extent possible, with other related environmental laws, regulations, and executive orders applicable to the action, or provide reasonable assurance that the requirements will be met. Full compliance with the transportation conformity rule (40 CFR parts 51 and 93) and the planning regulation (23 CFR part 1410) is required before completion of the FONSI.

(i) If, at any point in the EA process, the U.S. DOT agency determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

(j) Any action which normally would be classified as an EA but could involve unusual circumstances, such as, substantial controversy on community impact and/or environmental grounds, will require the U.S. DOT agency, in cooperation with the applicant, to determine if the EA is the appropriate level of documentation.

§ 1420.315 Findings of no significant impact.

(a) The U.S. DOT agency will review the EA and other documents submitted pursuant to § 1420.313 (e.g., copies of any hearing transcript and written comments, and the applicant's responses). If the U.S. DOT agency agrees with the applicant's recommendation of a FONSI, it will make such finding in writing and incorporate by reference the EA and any other related documentation.

(b) Pursuant to 40 CFR 1501.4(e)(2), for proposed actions which are either similar to ones normally requiring an EIS or are without precedent and the U.S. DOT agency is processing the action with an EA and expects to issue a FONSI, copies of the EA and proposed FONSI shall be made available for review by the public and affected units of government for a minimum of 30 days before the U.S. DOT agency makes its final decision. This public availability shall be announced by a notice similar to a public hearing notice.

(c) After a FONSI has been made by the U.S. DOT agency, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government, and the document shall be available from the applicant and the U.S. DOT agency upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(d) Where substantial changes are made to the project and/or its potential impacts after the public review period for the EA, the applicant, pursuant to § 1420.323(c), shall make copies of the revised EA and the FONSI available for review by the public and affected units of government for a minimum of 30 days before the U.S. DOT agency makes its final decision, unless the U.S. DOT agency determines, for good cause, that a different period is warranted.

(e) If another Federal agency has issued a FONSI on an action which includes an element proposed for U.S. DOT agency action, the U.S. DOT agency will evaluate the other agency's EA/FONSI. If the U.S. DOT agency determines that this element of the action and its environmental impacts have been adequately identified and assessed, the U.S. DOT agency will issue its own FONSI in accordance with paragraphs (a), (b), (c) and (d) of this section, incorporating the other agency's FONSI and any other related documentation. If environmental issues have not been adequately identified and assessed, the U.S. DOT agency will require appropriate environmental studies to complete the assessment.

§ 1420.317 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the U.S. DOT agency determines that the action(s) is likely to cause significant impacts on the environment or if the preparation of an EIS is otherwise appropriate. When the decision has been made by the U.S. DOT agency to prepare an EIS, the U.S. DOT agency will publish a Notice of Intent (40 CFR 1508.22) in the **Federal Register**. Applicants must announce the intent to prepare an EIS by appropriate means at the local level in accordance with the public involvement procedures established pursuant to § 1420.305.

(b) The U.S. DOT agency, in cooperation with the applicant, will publish the Notice of Intent and begin a scoping process to establish the scope of the draft EIS and the work necessary for its preparation. The documented results of the planning process relevant to the action, including the public involvement and interagency coordination that has occurred, must be considered in scoping. Scoping is normally achieved through the actions taken to comply with the public involvement procedures and interagency coordination required by §§ 1420.303 and 1420.305. The scoping process will: Review the range of alternatives and impacts and the major issues to be addressed in the EIS; aid in determining which aspects of the proposed action have potential for social, economic, or environmental impact; help identify measures which might mitigate adverse environmental impacts; identify environmental enhancements that might aid in harmonizing the action with the surrounding community; identify other environmental review and coordination requirements that must be performed concurrently with the EIS preparation; and achieve the other objectives of 40 CFR 1501.7 and environmental streamlining (§ 1420.203). If a public scoping meeting is to be held, it must be announced in the U.S. DOT agency 's Notice of Intent and by an appropriate means at the local level.

(c) The draft EIS shall be prepared by the U.S. DOT agency in cooperation with the applicant or, where permitted by 40 CFR 1506.5, by the applicant with appropriate guidance and participation by the U.S. DOT agency. The draft EIS shall evaluate all reasonable alternatives and may rely on information developed in accordance with 23 CFR part 1410. The draft EIS shall discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall evaluate the social, economic, and environmental impacts of the proposed action, reasonable alternatives that would avoid or reduce adverse impacts, measures which would mitigate adverse impacts, and environmental enhancements that would aid in harmonizing the action with the surrounding community. Alternatives must be sufficiently well-defined to allow full evaluation of the specific alignment and design variations that would avoid or minimize adverse impacts. The draft EIS shall summarize the public involvement and interagency coordination to the time of its approval. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by other related environmental laws, regulations, and executive orders to the extent appropriate at this stage in the environmental process.

(d) The U.S. DOT agency, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(e) A lead, joint lead, or a cooperating agency shall be responsible for printing and distributing the draft EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requests for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with U.S. DOT agency concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy and also must be informed of the nearest location where the draft EIS may be reviewed without charge.

(f) The draft EIS shall be circulated for comment by the applicant on behalf of the U.S. DOT agency. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to the following:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or alternatives;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) Neighboring States and Federal land management entities which may be affected by any of the alternatives.

(g) Public hearing requirements are to be carried out in accordance with the provisions of § 1420.305 and this section. Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(h) Through the U.S. Environmental Protection Agency's notice of availability (40 CFR 1506.10), the U.S. DOT agency shall establish a period of not less than 45 days for the receipt of comments on the draft EIS. The draft EIS or a transmittal letter sent with each copy of the draft EIS shall identify where comments are to be sent and when the comment period ends.

§ 1420.319 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the U.S. DOT agency in cooperation with the applicant or, where permitted by 40 CFR 1506.5, by the applicant with appropriate guidance and participation by the U.S. DOT agency. Preparation of the final EIS will involve such additional public involvement, interagency coordination, and engineering or environmental studies as are necessary to consider the appropriateness of refinements in the alternatives and the incorporation of mitigation measures and environmental enhancements in response to comments received on the draft EIS.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If major issues remain unresolved, the final EIS shall identify those issues and the coordination and other efforts made to resolve them.

(3) The final EIS shall evaluate all reasonable alternatives considered and identify the preferred alternative. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement and interagency coordination, and describe the environmental design features, including mitigation measures and environmental enhancements, that are incorporated into the proposed action. Environmental design features or other mitigation measures presented as commitments in the final EIS shall be incorporated into the action. The final EIS shall also document compliance with other related environmental laws, regulations, and executive orders applicable to the action, and, if full compliance is not possible, provide reasonable assurance that the requirements will be met.

(b) The U.S. DOT agency will indicate approval of the final EIS by signing and dating the cover page. Approval of the final EIS does not commit the U.S. DOT agency to approve any future grant request.

(c) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with U.S. DOT agency concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy and also must be informed of the nearest location where the final EIS may be reviewed without charge.

(d) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS and to anyone requesting a copy, no later than the time the document is filed with the U.S. EPA. In the case of lengthy documents, the U.S. DOT agency may allow alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 [2] which implements Executive Order 12372. The final EIS shall be available for public review at the applicant's offices and at appropriate DOT agency offices for at least 30 days after the U.S. EPA publication of the **Federal Register** notice of availability. Copies should also be made available for public review at institutions such as local government

[2] This document is available for inspection and copying as prescribed in 49 CFR part 7.

offices, libraries, and schools, as appropriate.

§ 1420.321 Record of decision.

(a) The U.S. DOT agency will complete and sign a record of decision (ROD) no sooner than 30 days after the U.S. EPA publication in the **Federal Register** of the notice of availability for the final EIS or 90 days after the U.S. EPA publication of the notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures and environmental enhancements that have been incorporated into the action, and document any required section 4(f) approval in accordance with 23 CFR part 1430. Until the ROD has been signed, no further approvals relative to the action may be given except those for administrative activities taken to secure further project funding and for other activities consistent with the limitation on actions in 40 CFR 1506.1. The applicant, in coordination with the U.S. DOT agency shall publish a notice of availability of the ROD for public review in a newspaper of general circulation, and, to the extent practicable, provide the approved ROD to all persons, organizations, and agencies that received a copy of the final EIS pursuant to § 1420.319(d).

(b) After issuance of a ROD, the U.S. DOT agency shall issue a revised ROD if it wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS or proposes to make substantial changes to the mitigation measures or findings discussed in the original ROD. Before issuing the revised ROD, the U.S. DOT agency shall consider whether additional notification, interagency coordination, and public involvement are needed in accordance with § 1420.303 and § 1420.305. To the extent practicable the approved revised ROD shall be provided to all persons, organizations and agencies that received a copy of the Final EIS pursuant to § 1420.319(d).

(c) Upon approval of the ROD, the mitigation and environmental enhancements in the final EIS associated with the alternative selected in the ROD become enforceable conditions of any subsequent grant related to the action or other DOT agency approval of the action. The U.S. DOT agency will ensure implementation of mitigation and environmental enhancements as described in § 1420.113.

§ 1420.323 Re-evaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the U.S. DOT agency if a final EIS is not approved by the U.S. DOT agency within three years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major DOT agency approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the U.S. DOT agency prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested U.S. DOT action. These consultations will be documented when determined necessary by the U.S. DOT agency.

(d) A re-evaluation under this section shall include additional notification, interagency coordination, and public involvement as appropriate in accordance with § 1420.303 and § 1420.305.

§ 1420.325 Supplemental environmental impact statements.

(a) A draft EIS or final EIS may be supplemented whenever the U.S. DOT agency determines that supplementation would improve decisionmaking, better inform the agency or the public, or serve other purposes. An EIS shall be supplemented whenever the U.S. DOT agency determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS.

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) A supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in the actual lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The U.S. DOT agency decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a ROD shall be prepared and circulated in accordance with § 1420.321.

(c) Where the U.S. DOT agency is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the U.S. DOT agency deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the U.S. DOT agency determines that a supplemental EIS is not necessary, the U.S. DOT agency shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required. Public involvement and interagency coordination commensurate with the nature and scope of the supplemental EIS shall be conducted in accordance with § 1420.305 and the public involvement procedures developed thereunder.

(e) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily prevent the granting of new approvals; require the withdrawal of previous approvals; or require the suspension of project activities for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a new evaluation of the entire action, or more than a limited portion of the overall action, the U.S. DOT agency shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

Subpart D—Definitions

§ 1420.401 Terms defined elsewhere.

The definitions contained in the CEQ regulation (40 CFR 1508) and in titles 23 (23 U.S.C. 101) and 49 of the United States Code (49 U.S.C. 14202) are applicable except as modified in § 1420.403.

§ 1420.403 Terms defined in this part.

The following definitions apply to this part and to part 1430 of this chapter:

Action means a surface transportation infrastructure or service investment (e.g., highway, transit, railroad, or mixed mode) proposed for direct implementation by the U.S. DOT agency or for the U.S. DOT agency financial assistance; and other activities, such as, joint or multiple use of right-of-way, changes in access control, that require a U.S. DOT agency approval or permit, but may or may not involve a commitment of Federal funds; and other FHWA or FTA program decisions, such as, promulgation of regulations and approval of programs, unless specifically defined by statute or regulation as not being an action.

Applicant means the Federal, State or local governmental authority that the U.S. DOT agency works with to conduct environmental studies and prepare environmental documents. For transportation actions implemented by the Federal government on Federal lands, the U.S. DOT agency or the Federal land management agency will take on the responsibilities of the applicant described herein.

Environmental enhancement means a measure which contributes to blending the proposed project harmoniously with its surrounding human communities and the natural environment and extends beyond those measures necessary to mitigate the specific adverse impacts resulting from a proposed transportation action. This includes measures eligible for Federal funding, such as transportation enhancement activities or transit enhancements, and measures funded by the applicant or by others.

Environmental studies means the investigations of potential social, economic, or environmental impacts conducted:

(1) As part of the metropolitan or statewide transportation planning process under 23 CFR part 1410,

(2) To determine the NEPA class of action and scope of analysis, and/or

(3) To provide information to be included in a NEPA decision process.

Hardship acquisition means the early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his/her property. This is justified when the property owner can document on the basis of health, safety, or financial reasons that remaining in the property poses an undue hardship compared to others.

Planning process means the process of developing metropolitan and statewide transportation plans and programs in accordance with 23 CFR part 1410.

Protective acquisition means the purchase of land to prevent imminent development of a parcel which is needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

Section 4(f) means the provision in law which provides protection to certain public lands and all historic properties (now codified in 49 U.S.C. 303 and 23 U.S.C. 138).

Transportation conformity means the process for assuring or conformity of transportation projects, programs, and plans with the purpose of State plans for attainment and maintenance of air quality standards under the U.S. EPA regulation at 40 CFR parts 51 and 93. The process applies only to areas designated as nonattainment or maintenance for a transportation related pollutant.

U.S. DOT agency means the FHWA, the FTA, or the FHWA and the FTA together. In addition, U.S. DOT agency refers to any other agency within the U.S. Department of Transportation that uses this part as provided for in § 1420.209.

U.S. DOT agency approval means the approval by FHWA/FTA of the applicant's request relative to an action. The applicant's request may be for Federal financial assistance, or it may be for some other U.S. DOT agency approval that does not involve a commitment of Federal funds.

PART 1430—PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Sec.

Authority: 23 U.S.C. 138 and 315; 49 U.S.C. 303; 49 CFR 1.48 and 1.51.

§ 1430.101 Purpose.

The purpose of this part is to implement 49 U.S.C. 303 and 23 U.S.C. 138 which were originally enacted as section 4(f) of the Department of Transportation Act of 1966 and are still commonly referred to as section 4(f).

§ 1430.103 Mandate.

(a) The U.S. DOT agency may approve a transportation project that uses publicly owned land from a significant public park, recreation area, or wildlife and waterfowl refuge, or any land from a significant historic site only if the U.S. DOT agency has determined that:

(1) There is no feasible and prudent alternative to the use of land from the property; and

(2) The project includes all possible planning to minimize harm to the property resulting from such use.

(b) [Reserved]

§ 1430.105 Applicability.

(a) This part applies to transportation projects that require an approval by the U.S. DOT agency, where the U.S. DOT agency has sufficient control and the statutory authority to condition the project or approval.

(b) The U.S. DOT agency will determine the applicability of section 4(f) in accordance with this part.

(c) This part does not apply to or alter approvals by the U.S. DOT agency made prior to the effective date of this regulation.

§ 1430.107 Use of land.

(a) Except as set forth in paragraph (b) of this section and § 1430.111, use of land occurs:

(1) When land is permanently incorporated into a transportation facility;

(2) When there is a temporary occupancy of land that is adverse to the statutory purpose of preserving the natural beauty of that land, as determined by the criteria in paragraph (b) of this section; or

(3) When there is a constructive use of land as determined by the criteria in paragraph (c) of this section.

(b) A temporary occupancy of land occurs when the use is so minimal that it does not constitute a use within the meaning of section 4(f) (§ 1420.403) when the following conditions are satisfied:

(1) The duration of the occupancy must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(2) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(3) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purposes of the resource, on either a temporary or permanent basis;

(4) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which existed prior to the project; and

(5) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the above conditions.

(c) A constructive use of section 4(f) land occurs when the transportation project does not incorporate land from the section 4(f) resource, but the impacts of the project on the resource due to its proximity are so severe that the activities, features, or attributes that qualify the resource for the protection of section 4(f) are substantially impaired. The U.S. DOT agencies have reviewed the following situations and have determined that constructive use occurs when:

(1) The projected noise level increase attributable to the transportation project substantially interferes with the use and enjoyment of a noise-sensitive facility that is a resource protected by section 4(f), such as hearing the performances at a public outdoor amphitheater, sleeping in the sleeping area of a public campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(2) The proximity of the project to the section 4(f) resource substantially impairs aesthetic features or attributes of a resource protected by section 4(f), where such features or attributes make an important contribution to the value of the resource. For example, substantial impairment of visual or aesthetic qualities occurs where a transportation structure is located in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part from its setting;

(3) The project restricts access to the section 4(f) property and, as a result, substantially diminishes the utility of the resource;

(4) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as vibration levels from a rail project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(5) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

§ 1430.109 Significance of the section 4(f) resource.

(a) Consideration under section 4(f) is required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire section 4(f) resource is significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant, unless the U.S. DOT agency and the officials with jurisdiction have agreed, formally or informally, that the resource is not significant. The U.S. DOT agency will review the significance determination to assure its reasonableness.

(b) Section 4(f) applies to all properties on or eligible for the National Register of Historic Places. The U.S. DOT agency, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify such historic sites. Section 4(f) applies only to historic sites on or eligible for the National Register unless the U.S. DOT agency determines that the application of section 4(f) to a historic site is otherwise appropriate.

§ 1430.111 Exceptions.

(a) Consideration under section 4(f) is not required for any park road or parkway project developed in accordance with 23 U.S.C. 204.

(b) Consideration under section 4(f) is not required for trail-related projects funded through the Symms National Recreational Trails Act of 1991 (16 U.S.C. 1261).

(c) Consideration under section 4(f) is not required for "transportation enhancement activities" as defined in 23 U.S.C. 101(a) and transit enhancements as defined in 49 U.S.C. 5302(a)(15) if:

(1) The use of the section 4(f) property is solely for the purpose of preserving or enhancing the activities, features, or attributes that qualify the property for section 4(f) protection; and

(2) The Federal, State, or local official having jurisdiction over the property agrees in writing that the use is solely for the purpose of preserving or enhancing the section 4(f) activities, features, or attributes of the property and will, in fact, accomplish this purpose.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses and are, in fact, managed for multiple uses, section 4(f) applies only to those portions of such lands which function as significant public parks, recreation areas, or wildlife refuges, or which are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife purposes or historic sites. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The determination of significance shall apply to the entire area of lands which so function or are so designated. The U.S. DOT agency will review these determinations to assure their reasonableness.

(e) Consideration under section 4(f) is not required for the restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The SHPO has been consulted and has not objected to the U.S. DOT agency finding in paragraph (e)(1) of this section.

(f) Archeological sites.

(1) Section 4(f) applies to all archeological sites on or eligible for inclusion in the National Register, including those discovered during construction except as set forth in paragraph (f)(2) of this section. When section 4(f) requirements apply to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take into account the level of investment already made in the project. The review process, including the consultation with other agencies, will be shortened as appropriate.

(2) Section 4(f) requirements do not apply to archeological sites where the U.S. DOT agency, after consultation with the SHPO, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the U.S. DOT agency decides, with agreement of the SHPO, not to recover the data in the resource.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made, and determinations of significance changed, late in the development of a project. With the exception of the treatment of archeological resources in paragraph (f) of this section, the U.S. DOT agency may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(h) Constructive use normally does not occur when:

(1) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places results in an agreement of no adverse effect;

(2) The projected traffic noise levels of a proposed nearby highway project do not exceed the FHWA noise abatement criteria given in Table 1, 23 CFR part 772, or the projected operational noise levels of a proposed nearby transit project do not exceed the noise impact criteria in the FTA guidelines (Federal Transit Administration, Transit Noise and Vibration Impact Assessment, April 1995, available from the FTA offices);

(3) The projected noise levels exceed the relevant threshold in paragraph (h)(2) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(4) A proposed transportation project will have proximity impacts on a section 4(f) property, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the U.S. DOT agency approval of a final NEPA document established the location of the project before the designation, establishment, or change in the significance of the section 4(f) property. However, if the property in question is a historic site that would be eligible for the National Register except for its age at the time that the project location is established, and construction of the project would begin after the site became eligible, then constructive use of the historic site may occur and such use must be evaluated;

(5) There are proximity impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. The following examples of such concurrent planning or development include, but are not limited to:

(i) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource; or

(ii) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(iii) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(iv) Proximity impacts will be mitigated to a condition equivalent to, or better than, that which would occur under a no-build scenario;

(v) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(vi) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

§ 1430.113 Section 4(f) evaluations and determinations under the NEPA umbrella.

(a) Alternatives to avoid the use of section 4(f) properties and measures to minimize harm to such land shall be developed and evaluated by the applicant in cooperation with the U.S. DOT agency. Such evaluation shall be initiated early when alternatives are under study. An alternative that avoids section 4(f) property must be preferred unless the evaluation demonstrates that there are unique problems or unusual factors associated with it, or that the cost, the social, economic, or environmental impacts, or the community disruption resulting from such alternative reach extraordinary magnitudes.

(b) In accordance with the concept of the NEPA umbrella in 23 CFR 1420.109, the section 4(f) evaluation is normally presented in the draft environmental impact statement (EIS), the environmental assessment (EA), or the categorical exclusion (CE) documentation. The evaluation may incorporate relevant information from the planning process in accordance with § 1430.119. A separate section 4(f) evaluation may be necessary as described in section § 1430.115.

(c) The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the U.S. Department of the Interior, and as appropriate to the U.S. Department of Agriculture and the U.S. Department of Housing and Urban Development. A minimum of 45 days shall be established by the U.S. DOT agency for receipt of comments.

(d) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, the finding of no significant impact (FONSI), the CE documentation, or the separate section 4(f) evaluation shall specifically address the following:

(1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and

(2) All measures incorporated into the project that will be taken to minimize harm to the section 4(f) property.

(e) The U.S. DOT agency is not required to determine that there is no constructive use. However, such a determination may be made at the discretion of the U.S. DOT agency. When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(1) Identification of the current activities, features, or attributes of a resource that qualify it for protection under section 4(f) and which may be sensitive to proximity impacts;

(2) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project; and

(3) Consultation, on the above identification and analysis, with the Federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(f) For actions processed with an EIS, the U.S. DOT agency will make the section 4(f) determination either in its approval of the final EIS or in the record of decision (ROD). Where the section 4(f) approval is documented in the final EIS, the U.S. DOT agency will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and

proposed to be processed with a FONSI or classified as a CE, shall not proceed until the U.S. DOT agency has given notification of section 4(f) approval. For these actions, any required section 4(f) approval will be documented in the FONSI, in the CE approval, if one is provided, or in a separate section 4(f) document.

(g) The final section 4(f) evaluation will be reviewed for legal sufficiency.

§ 1430.115 Separate section 4(f) evaluations.

(a) Circulation of a separate section 4(f) evaluation will be required when:

(1) A proposed modification of the alignment or design would require the use of section 4(f) land after the CE, FONSI, draft EIS, or final EIS has been processed;

(2) A proposed modification of the alignment, design, or measures to minimize harm after an original section 4(f) approval, would result in a substantial increase in the use of section 4(f) land or a substantial reduction in the measures to minimize harm included in the project;

(3) The U.S. DOT agency determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property; or

(4) An agency whose actions are not subject to section 4(f) requirements is the lead agency for the NEPA process on an action that involves section 4(f) property and requires a U.S. DOT agency action.

(b) If the U.S. DOT agency determines under paragraph (a) of this section or otherwise, that section 4(f) is applicable after the CE, FONSI, or ROD has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental NEPA document. Where a separately circulated section 4(f) evaluation is prepared after the CE, FONSI, or ROD has been processed, such evaluation does not necessarily:

(1) Prevent the granting of new approvals;

(2) Require the withdrawal of previous approvals; or

(3) Require the suspension of project activities for any activity not affected by the new section 4(f) evaluation.

§ 1430.117 Programmatic section 4(f) evaluations.

The U.S. DOT agency, in consultation with the U.S. Department of the Interior and other agencies, as appropriate, may make a programmatic section 4(f) determination for a class of similar projects. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

§ 1430.119 Linkage with transportation planning.

(a) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed during the planning process or in a tiered EIS.

(b) When a planning document or a first-tier EIS is intended to provide the basis for subsequent project development as provided in § 1420.201 and 40 CFR 1502.20, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made of the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm, to the extent that the level of detail at this stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the project development process have not been precluded by decisions made at this stage. This preliminary determination is then incorporated into official planning documents or the first-tier EIS.

(c) A section 4(f) approval made when additional design details are available will include a determination that:

(1) The preliminary section 4(f) determination made pursuant to paragraph (a) remains valid; and

(2) The criteria of § 1430.103 and § 1430.113(a) have been met.

§ 1430.121 Definitions.

The definitions contained in 23 CFR 1420.403, 23 U.S.C. 101(a), 49 U.S.C. 5302, and 40 CFR part 1508 are applicable to this part.

Federal Transit Administration

49 CFR Chapter VI

For the reasons set forth in the preamble, the Federal Transit Administration proposes to amend chapter VI of title 49, Code of Federal Regulations, as follows:

3. Revise part 622 to read as follows:

PART 622—NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING

Subpart A—Purpose, Policy, and Mandate

Sec.

622.101 Cross-reference to subpart A of 23 CFR part 1420.

Subpart B—Program and Project Streamlining

622.201 Cross-reference to subpart B of 23 CFR part 1420.

Subpart C—Process and Documentation Requirements

622.301 Cross-reference to subpart C of 23 CFR part 1420.

Subpart D—Definitions

622.401 Cross-reference to subpart D of 23 CFR part 1420.

Authority: 23 U.S.C. 109, 128, 134 and 138; 42 U.S.C. 2000d–2000d–4, 4321 *et seq.*, and 7401 *et seq.*; 49 U.S.C. 303, 5301(e), 5303, 5309, and 5324(b) and (c); 49 CFR 1.51.

Subpart A—Purpose, Policy, and Mandate

§ 622.101 Cross-reference to subpart A of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart A of 23 CFR part 1420.

Subpart B—Program and Project Streamlining

§ 622.201 Cross-reference to subpart B of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart B of 23 CFR part 1420.

Subpart C—Process and Documentation Requirements

§ 622.301 Cross-reference to subpart C of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart C of 23 CFR part 1420.

Subpart D—Definitions

§ 622.401 Cross-reference to subpart D of 23 CFR part 1420.

The regulations for complying with this subpart are set forth in subpart D of 23 CFR part 1420.

4. Add a new part 623 to read as follows:

PART 623—PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES

Sec.
623.101 Cross-reference to 23 CFR part 1430.

Authority: 49 U.S.C. 303; 49 CFR 1.51.

§ 623.101 Cross-reference to 23 CFR part 1430.

The regulations for complying with 49 U.S.C. 303 are set forth in 23 CFR part 1430.

Issued on: May 18, 2000.

Vincent F. Schimmoller,

Acting Executive Director, Federal Highway Administration.

Nuria I. Fernandez,

Acting Administrator, Federal Transit Administration.

[FR Doc. 00–13022 Filed 5–19–00; 1:15 pm]

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Federal Register

Thursday,
May 25, 2000

Part V

Department of Transportation

Federal Highway Administration

23 CFR Parts 655 and 940
Intelligent Transportation System Architecture and Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 655 and 940

[FHWA Docket No. FHWA–99–5899]

RIN 2125–AE65

Intelligent Transportation System Architecture and Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to implement section 5206(e) of the Transportation Equity Act for the 21st Century (TEA–21), enacted on June 9, 1998, requiring Intelligent Transportation System (ITS) projects funded through the highway trust fund to conform to the National ITS Architecture and applicable standards. Because it is highly unlikely that the entire National ITS Architecture would be fully implemented by any single metropolitan area or State, the FHWA proposes in this NPRM (the ITS Architecture NPRM) that the National ITS Architecture be used to develop a local implementation of the National ITS Architecture, which is referred to as an "ITS regional architecture." Therefore, conformance with the National ITS Architecture is defined under this proposal as development of an ITS regional architecture based on the National ITS Architecture, and the subsequent adherence of ITS projects to the ITS regional architecture. The ITS regional architecture would consist of a concept of operations and a conceptual design, which would draw from the National ITS Architecture, but would be tailored to address the local situation and ITS investment needs. The ITS regional architecture follows from the ITS integration strategy developed in another NPRM entitled "Statewide Transportation Planning; Metropolitan Transportation Planning" also published in today's **Federal Register**. In this NPRM, the FHWA proposes the use of the system engineering process and applicable standards and interoperability tests adopted by the DOT.

DATES: Written comments must be received on or before August 23, 2000. For dates of public information meetings see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–40, 400 Seventh Street, SW, Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard. For addresses of public information meetings see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For technical information*: Mr. Bob Rupert, (202) 366–2194, Office of Travel Management (HOTM–1) and Mr. Mike Freitas, (202) 366–9292, ITS Joint Program Office. *For legal information*: Mr. Wilbert Baccus, Office of the Chief Counsel (HCC–32), (202) 366–1346, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the US DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded 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**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

The document may also be viewed at the DOT's ITS home page at *http://www.its.dot.gov*.

Public Information Meetings

The DOT will hold a series of seven public briefings within the comment period for the NPRM. The purposes of these briefings is to explain the content of the NPRM and encourage public input to the final rulemaking. The meetings will address this NPRM, a companion NPRM on the metropolitan and statewide planning process (FHWA RIN 2125–AE62; FTA RIN 2132–AA66), and the NPRM entitled, "NEPA [National Environmental Policy Act of 1969] and Related Procedures for Transportation Decisionmaking, Protection of Public Parks, Wildlife and Waterfowl Refuges, and Historic Sites" (NEPA/NPRM; FHWA RIN 2125–AE64; FTA RIN 2132–AA43). The meetings will be scheduled from approximately 8:00 a.m. to 5:00 p.m. at the locations listed below. Changes in the information below will be made available after the publication of this NPRM through the FHWA and the FTA websites, other public announcement avenues and the newsletters and websites of major stakeholder groups. Individuals wishing information but without access to these sources may contact the individuals listed above.

The structure of the meetings will emphasize brief presentations by the DOT staff regarding the content of the NPRMs. A period for clarifying questions will be provided. Under current statutory and regulatory provisions, the DOT staff will not be permitted to engage in a substantive dialog regarding what the content of the NPRMs and the final regulations should be. Attendees wishing to express ideas and thoughts regarding the final content of the rules should direct those comments to the docket. Briefing sites will include: Boston, MA, Auditorium, Volpe National Transportation Systems Center, 55 Broadway, June 9, 2000; Atlanta, GA, Westin Peachtree Plaza Hotel, 210 Peachtree Street, June 20, 2000; Washington, D.C., Marriott Metro Center, 775 12th Street NW, June 23, 2000; Chicago, IL, Holiday Inn Mart Plaza, 350 North Orleans Street, June 27, 2000; Denver, CO, Marriott City Center, 1701 California Street, June 30, 2000; Dallas, TX, Hyatt Regency Dallas, 300 Reunion Boulevard, July 11, 2000; and San Francisco, CA, Radisson Miyako, 1625 Post Street, July 19, 2000.

As part of the outreach process planned for these proposed rules, the FHWA/FTA will be conducting a national teleconference on June 15, 2000 from 1–4 p.m. eastern time, through the auspices of the Center for Transportation and the Environment at North Carolina State University. The teleconference will be accessible through numerous downlink locations nationwide and further information can be obtained from Katie McDermott at kpm@unity.ncsu.edu. The purpose of the teleconference is to describe the proposed new statewide and metropolitan planning, National Environmental Policy Act (NEPA) implementation, and Intelligent Transportation Systems (ITS) rules. An overview of each of the three Notices of Proposed Rulemaking (NPRMs) will be presented and the audience (remote and local) will have opportunities to ask questions and seek clarification of

FHWA/FTA proposals. By sponsoring this teleconference it is hoped that interest in the NPRMs is generated, that stakeholders will be well informed about FHWA/FTA proposals, and that interested parties will participate in the rulemaking process by submitting written suggestions, comments and concerns to the docket.

Introduction

Section 5206(e) of the TEA–21, Public Law 105–178, 112 Stat. 107, at 457, requires ITS projects funded through the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols.

The proposed implementing regulations for this provision of law are contained in two NPRMs. The first NPRM for revisions to the Statewide and Metropolitan transportation planning processes, 23 CFR part 1410, published separately in today's **Federal Register**, contains language specific to ITS projects pertaining to implementation of section 5206(e)—§§ 1410.104 (Definition of ITS Integration Strategy), 1410.310(g) (Agreements), 1410.322(b)(11) (Plan and Integration Strategy Content), 1410.214 (a)(3), and 1410.216(c)(8) (State Transportation Improvement Program Content). The second NPRM concerning the ITS Architecture would add part 940 to subchapter K to implement section 5206(e) of TEA–21. The FHWA believes the proposed rules, 23 CFR parts 1410 and 940, would implement the legislative requirement for conforming to the national architecture and standards.

Background

Intelligent transportation systems represent the application of information processing, communications technologies, advanced control strategies, and electronics to the field of transportation. Information technology in general is most effective and cost beneficial when systems are integrated and interoperable. The greatest benefits in terms of safety, efficiency, and costs are realized when electronic systems are systematically integrated to form a whole in which information is shared with all and systems are interoperable.

In the transportation sector, successful ITS integration and interoperability require addressing two different and yet fundamental issues; that of technical and institutional integration. "Technical integration" of electronic systems is a complex issue that requires considerable up-front planning and meticulous execution for electronic information to be stored and accessed by various parts of a system. "Institutional integration" involves coordination between various agencies and jurisdictions to achieve seamless operations and/or interoperability. In order to achieve effective institutional integration of systems, agencies and jurisdictions must agree on the benefits of ITS and the value of being part of an integrated system. They must agree on roles, responsibilities, and shared operational strategies. Finally, they must agree on standards and, in some cases, technologies and operating procedures to ensure interoperability. In some instances, there may be multiple standards that could be implemented for a single interface. In this case, agencies will need to agree on a common standard or agree to implement a technical translator that will allow dissimilar standards to interoperate. This coordination effort is a considerable task that will happen over time, not all at once. Transportation organizations, such as, transit properties, State and local transportation agencies, and metropolitan planning organizations must be fully committed to achieving institutional integration in order for integration to be successful. The transportation agencies must also coordinate with agencies for which transportation is a key, but not a primary part of their business, such as, emergency management and law enforcement agencies.

Successfully dealing with both the technical and institutional issues requires a high-level conceptual view of the future system and careful, comprehensive planning. The framework for the system is referred to as the "architecture." The architecture defines the system components, key functions, the organizations involved, and the type of information shared between organizations and parts of the system. The architecture is, therefore, fundamental to successful system implementation, integration, and interoperability.

The National ITS Architecture

The Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, 105 Stat. 1914, initiated Federal funding for the ITS program. The program at that time was largely focused on research and development and operational tests of technologies. A key part of the program was the development of the "National ITS Architecture." The National ITS Architecture provides a common structure for the design of ITS systems. The architecture defines the functions that could be performed to satisfy user requirements and how the various elements of the system might connect to share information. It is not a system design, nor is it a design concept. However, it does define the framework around which multiple design approaches can be developed, each one specifically tailored to meet the needs of the user, while maintaining the benefits of a common approach. The National ITS Architecture, Version 3.0 can be obtained from the ITS Joint Program Office of the DOT in CD–ROM format and on the ITS web site http://www.its.dot.gov. The effort to develop a common national system architecture to guide the evolution of ITS in the United States over the next 20 years and beyond has been managed since September 1993 by the FHWA. The National ITS Architecture describes in detail what types of interfaces should exist between ITS components and how they will exchange information and work together to deliver the given ITS user service requirements. The National ITS Architecture and standards can be used to guide multi-level government and private-sector business planners in developing and deploying nationally compatible systems. By ensuring system compatibility, the DOT hopes to accelerate ITS integration nationwide and develop a strong, diverse marketplace for related products and services.

It is highly unlikely that the entire National ITS Architecture will be fully implemented by any single metropolitan area or State. For example, the National ITS Architecture contains information flows for an Automated Highway System that is unlikely to be part of most regional implementations. However, the architecture has considerable value as a framework for local governments in the development of regional architectures by identifying the many functions and information sharing opportunities that may be desired. It can assist local governments with both of the key elements—technical interoperability and institutional coordination.

The National ITS Architecture, because it aids in the development of a high-level conceptual view of a future system, can assist local governments in identifying applications that will support their future transportation needs. From an institutional coordination perspective, the National ITS Architecture helps local transportation planners to identify other stakeholders who may need to be involved and to identify potential integration opportunities. From a technical interoperability perspective, the National ITS Architecture provides a logical and physical architecture and

process specifications to guide the design of a system. The National ITS Architecture also identifies interfaces where standards may apply, further supporting interoperability.

Transportation Equity Act for the 21st Century

As noted above, section 5206(e) of the TEA–21 requires ITS projects funded from the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols. The purpose of the statute is to accelerate the deployment of interoperable ITS systems. Use of the National ITS Architecture provides significant benefits to local transportation planners and deployers as follows:

1. The National ITS Architecture provides assistance with technical design. It saves considerable design time because physical and logical architectures are already defined.
2. Information flows and process specifications are defined in the National ITS Architecture, allowing local governments to accelerate the process of defining system functionality.
3. The architecture identifies standards that will support interoperability now and into the future, but it leaves selection of technologies to local decisionmakers.
4. The architecture provides a sound engineering framework for integrating multiple applications and services in a region.

Transportation Planning Process

The existing transportation planning processes under titles 23 and 49, U.S.C., require a continuing, comprehensive, and coordinated approach to assessing transportation needs, evaluating a range of solutions, and providing a coordinated response through transportation investments. The TEA–21 further emphasizes operations and management of the transportation network as a key consideration in transportation planning. The transportation planning process is currently institutionalized through statewide and metropolitan planning.

Effective implementation of ITS requires careful and comprehensive planning. This notice of proposed rulemaking and the accompanying NPRM on Statewide and Metropolitan Transportation Planning, published separately in today's **Federal Register**, propose changes to 23 CFR part 1410 and explains how ITS would be integrated into the planning process. The ITS would become part of the transportation planning process through the locally defined ITS Integration Strategy. This ITS integration strategy would guide future investment decisions and foster integration and interoperability. Developing the strategy as part of the overall transportation planning process would ensure that ITS is given appropriate consideration as a solution for future transportation needs and services.

Consequently, the DOT is issuing an NPRM (23 CFR part 1410), published separately in today's **Federal Register**, that proposes to incorporate ITS into the transportation planning process for both metropolitan and statewide planning (in addition to other changes needed to implement the TEA–21). The proposed provisions specific to ITS are set forth in 23 CFR 1410.104, 1410.214(a)(3), 1410.310(g), and 1410.322(b)(11). A summary of the proposed revisions follows:

During the development of the metropolitan and/or statewide transportation plan, if ITS applications are envisioned, the transportation plan shall address an ITS integration strategy. Provision shall be made to include participation of key operating agencies in the development of the integration strategy. The ITS integration strategy shall clearly assess existing and future ITS systems, including their functions and information sharing expectations. Planning for ITS shall produce an agreement among the Metropolitan Planning Organizations (MPOs), State DOTs, transit operators and other agencies which addresses policy and operational issues affecting the successful implementation of the ITS integration strategy. The policy statement shall address provisions to ensure ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects. Further, as provided in proposed 23 CFR 1410.322 (b)(11), the transportation plan shall identify:

(1) Major regional ITS initiatives (a program of related projects that are multi-jurisdictional and/or multi-modal),

(2) ITS projects of a scale to affect regional integration of ITS systems, and

(3) ITS projects that directly support national interoperability.

Project Development Process

The ITS integration strategy that is part of the transportation plan would be general in content, articulating key policies and a vision for the planning area. More detailed conceptual designs and operational procedures, as agreed upon by key stakeholders, are necessary to support project development. This proposed rule seeks to implement this approach as part of the project development process. There are two distinct sections to the proposal. The first deals with development of an ITS regional architecture that lays the foundation for integration in a metropolitan planning area or State. The second deals with final project design and ensuring conformance to both the ITS integration strategy and the ITS regional architecture.

Summary of Proposed Requirements

I. The ITS Regional Architecture

This NPRM on the ITS Architecture and Standards would require development of a local implementation of the National ITS Architecture referred to as an ITS regional architecture that is consistent with the ITS integration strategy. The ITS regional architecture would be tailored to meet local needs, meaning that it may not address the entire National ITS Architecture and may also address services not included by the National ITS Architecture. The ITS regional architecture may be developed either through an initial regional development effort or incrementally as major ITS investments are anticipated. In either case, the ITS regional architecture should contain a concept of operations and a conceptual design that addresses the integration of new ITS projects as they are advanced. In this context, a "region" is a geographical area that is based on local needs for sharing information and coordinating operational strategies among multiple projects. A region can be specified at a metropolitan, statewide, multi-State, or corridor level. While "regions" for ITS development may be at any geographic scale, responsibility for planning rests with either the MPO or State planning process. For ITS purposes, a region is any geographic area designated by the planning process. The responsible planning entity (MPO or State) will address the ITS region and ITS planning. Where ITS regions cross planning boundaries, they should be coordinated by the appropriate planning entities (MPOs or States). For ITS Commercial Vehicle Operation projects, the size of the region should not be smaller than a State, with consideration for multi-State, national, and international applications. A regional approach promotes integration of transportation systems. The size of the region should reflect the breadth of the integration of transportation systems and may be at a metropolitan, statewide, multi-State or corridor level.

II. Project Development

Additionally, the proposed regulations would require that all ITS projects be developed using a system engineering process, again recommending the use of the National ITS Architecture as a resource. Project development would be based on the relevant portions of the ITS integration strategy and the ITS regional architecture which the project implements. ITS projects would be required to use applicable ITS standards that have been officially adopted by the DOT and applicable interoperability tests officially adopted by the DOT. Where multiple standards exist, it will be the responsibility of the stakeholders to determine how best to achieve the interoperability they desire.

III. FHWA Project Oversight Procedures

The FHWA project oversight procedures would remain consistent with routine Federal-aid project oversight. Documentation of the proposed ITS requirements would be required to be included in project documents. Any changes made in project design that impact either the ITS integration strategy or the ITS regional architecture would be documented and the appropriate revisions made and agreed to in the ITS integration strategy and/or the ITS regional architecture. All ITS projects that advance to design or preliminary engineering would be required to conform to the system engineering and conformity requirements immediately upon the effective date of a final rule on the National ITS Architecture and Standards. In the event that an applicable ITS regional architecture or ITS integration strategy does not exist, the applicable portions of the National ITS Architecture would be identified and used as the basis for analysis. All requirements of this proposal would apply for two years from the effective date of a final rule. Replacement of existing systems would not be required.

IV. Outreach Process

In the spring of 1998, the FHWA held ten nationwide outreach meetings on a proposed conceptual approach for ensuring consistency with the National ITS Architecture. These meetings were intended to generate discussion and solicit input from the perspective of many different transportation stakeholders on the feasibility of the proposed FHWA approach. Meetings were attended by representatives of Federal, State, local and regional transportation agencies, public sector agencies that rely on Federal-aid funds for projects with ITS components, and interested parties from universities and the private sector. In general, stakeholders expressed the opinion that the interim guidance and the use of system engineering principles represent good practice. Stakeholders expressed a requirement for straightforward, unambiguous guidance that could be implemented with a minimum of additional paperwork, and largely agreed that the interim guidance met this requirement. For more information please see "National ITS Architecture Consistency Outreach Meetings: Summary Findings (1998)" which is included as part of this docket.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the FHWA docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment closing period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has preliminarily determined that this proposed action is not a significant regulatory action under Executive Order 12866 and within the meaning of the Department of Transportation regulatory policies and procedures. This determination is based upon the regulatory assessment of the proposed rule that indicates that the annual impact of the rule would not exceed $100 million nor would it adversely affect the economy, a sector of the economy, productivity, jobs, the environment, public health, safety, or State, local, or tribal governments.

The FHWA has prepared a preliminary regulatory evaluation (PRE) to accompany the NPRM. A copy of the PRE is included in the docket. The FHWA believes that this proposed action would implement the requirements of section 5206(e) of the TEA–21. Although this law requires ITS projects funded through the highway trust fund to conform to the National ITS Architecture, the FHWA would require development of a regional architecture consisting of a concept of operations and a conceptual design, and would require use of the system engineering process, applicable or provisional standards, and protocols, and interoperability tests developed by the DOT. In developing the proposed rule, the FHWA has sought to allow broad discretion to those entities impacted by the rule, in levels of response and approach, that are appropriate to particular plans and projects while conforming to the requirements of TEA–21. The FHWA has considered the costs and benefits of effective implementation of ITS through careful and comprehensive planning. ITS becomes part of the transportation planning process through the locally defined ITS Integration Strategy. This ITS strategy would guide future investment decisions and foster the benefits of integration and interoperability. Developing the strategy as part of the overall transportation planning process would ensure that ITS is given appropriate consideration as a solution for future transportation needs and services.

Costs

The total costs of this NPRM over 10 years is estimated between $38.1 million and $44.4 million (the net present value over 10 years is between $22.3 million and $31.2 million). The annual constant dollar impact is estimated to range between $3.2 million and $4.4 million. These 10-year cost estimates include transportation planning cost increases, to MPOs ranging from $10.8 million to $13.5 million, and to States from $5.2 million to $7.8 million. Estimated costs to implementing agencies for the development of regional architectures range between $15.8 million and $23.2 million.

These costs do not include additional implementation costs for individual projects as commenters found the additional cost extremely difficult to estimate. Those who responded suggested that the increased cost of project implementation over current good practice would be minimal. However, because of the limited amount of data available on the additional implementation costs for individual projects, the FHWA is seeking additional data on this issue from commenters to this NPRM.

Benefits

The anticipated non-monetary benefits derived include savings from the avoidance of duplicative development, reduced overall development time, and earlier detection of potential incompatibilities. As with

project implementation impacts, the benefits of the NPRM are very difficult to quantify in monetary terms. It is estimated that the coordination guidance provided through implementation of the NPRM can provide savings of approximately $150,000 to any potential entity seeking to comply with the requirements of section 5206(e) of the TEA–21 as compared with an entity having to undertake compliance individually. The costs may be offset by benefits derived from the reduction of duplicative deployments, reduced overall development time, and earlier detection of potential incompatibilities.

In order to assist the FHWA's analysis of costs and benefits for the final rule stage, the FHWA requests that commenters provide additional information on the following questions:

(1) Are there implementation costs to project designers and operators not properly represented in the present data?

(2) Are there updating and maintenance costs to any of the impacted entities not properly reflected in the present data?

A detailed discussion of how the FHWA prepared its estimates is provided in this NPRM for interested parties that are not able to review the PRE.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated, through the regulatory assessment, the effects of this action on small entities (small businesses, small organizations, and local governments) and determined that this action will not have a significant impact on small entities. Small businesses and small organizations are not subject to this NPRM, which applies to government entities only. The rule accommodates small governmental entities in two significant ways. First, the planning component of the NPRM would apply to MPOs and States. An MPO is the required transportation planning organization for an urbanized area (23 CFR part 1410). An urbanized area, as defined in 23 U.S.C. 101, has a population of 50,000 or more. Therefore small government agencies for areas having populations of less than 50,000 would not be affected. Secondly, the self-scaling aspect of the ITS Architecture NPRM would permit the compliance requirements to vary with the magnitude of the ITS requirements of the entity (small ITS projects have correspondingly small compliance documentation requirements). Small entities, primarily transit agencies, coming within the project implementation component of the proposed rule would be accommodated through this self-scaling feature that imposes only limited requirements on small ITS activities. This same feature would also provide accommodation to MPOs that, while larger than the small entity definition of the Regulatory Flexibility Act, have only small ITS planning requirements. Accordingly, the FHWA preliminarily certifies that this proposed action would not have a significant impact on a substantial number of small entities. A copy of the analysis on the small entity impact is provided in the docket file.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13132 (Federalism)

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

Executive Order 12372 (Intergovernmental Review)

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

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Paperwork Reduction Act

This proposed action does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this proposed action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321), and has preliminarily determined that this proposed action would not have any effect on the quality of the environment.

Regulation Identification Number

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

List of Subjects

23 CFR Part 655

Design standards, Grant programs-transportation, Highways and roads, Incorporation by reference, Signs and symbols, Traffic regulations.

23 CFR Part 940

Design standards, Grant programs-transportation, Highways and roads, Intelligent transportation systems.

Issued on: May 18, 2000.

Vincent F. Schimmoller,

Acting Executive Director, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to amend Chapter I of title 23, Code of Federal Regulations, as set forth below:

PART 655—[AMENDED]

1. Revise the authority citation for part 655 to read as follows:

Authority: 23 U.S.C. 101(a), 104, 105, 109, 114, 135, 217, 315, and 402; and 49 CFR 1.48.

Subpart D—[Removed]

2. Remove subpart D of part 655, consisting of §§ 655.401, 655.403, 655.407, 655.409, 655.411.

3. Add a new subchapter K, consisting of part 940, to read as follows:

SUBCHAPTER K—INTELLIGENT TRANSPORTATION SYSTEMS

PART 940—INTELLIGENT TRANSPORTATION SYSTEM ARCHITECTURE AND STANDARDS

Sec.

Authority: 23 U.S.C. 101, 109, 315, and 508; sec 5206(e), Pub. L. 105–178, 112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

§ 940.1 Purpose.

The purpose of this regulation is to provide policies and procedures relating to the Federal-aid requirements for intelligent transportation systems (ITS) projects funded through the highway trust fund.

§ 940.3 Definitions.

ITS integration strategy means a systematic plan for coordinating and implementing ITS investments funded with highway trust funds to achieve an integrated regional transportation system.

ITS project means any project that in whole or in part funds the acquisition of technologies or systems of technologies (*e.g.* computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

ITS regional architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of projects or groups of projects under an ITS integration strategy.

National ITS Architecture (also "national architecture") means a common framework for ITS interoperability. The National ITS Architecture comprises the logical architecture and physical architecture which satisfy a defined set of user services. All of these documents are controlled by the FHWA, and are updated on an as-needed basis. New versions of the documents, when they are issued, will be available from the FHWA in hard copy and electronic format on the DOT web site at *http://www.its.dot.gov*.

Region is the geographical area that is based on local needs for sharing information and coordinating operational strategies in order to address transportation problems. The size of the region should be chosen to optimize integration of transportation systems by fostering the exchange of information on operating conditions across ITS systems and across a number of agencies and jurisdictions.

Systems engineering is the process to arrive at a final design of a system which is selected from a number of alternatives that would accomplish the same objectives. As in most disciplines, there are usually a number of technical solutions to a set of requirements. This process considers the total life cycle of the project in the evaluation of alternatives including not only the technical merit of potential solutions, but also the costs and relative value of the alternatives that are responsive to the needs of the customer.

§ 940.5 Policy.

The ITS projects shall conform to the National ITS Architecture and standards in accordance with the regulations contained in 23 CFR part 1410. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture in developing a local implementation of the National ITS Architecture, referred to as an ITS regional architecture, and the subsequent adherence of all ITS projects to that ITS regional architecture. Development of the ITS regional architecture begins with the transportation planning process and the development of an ITS integration strategy for Statewide and Metropolitan Transportation Planning.

§ 940.7 Applicability.

All ITS projects that are funded in whole or in part with the highway trust fund are subject to these provisions.

§ 940.9 ITS regional architecture.

(a) An ITS regional architecture shall be developed for implementing the ITS integration strategy as provided in 23 CFR 1410. 214(a)(3) and 1410.322(b)(11) to guide the development of specific projects and programs. The ITS regional architecture shall conform with the applicable ITS integration strategy. The National ITS Architecture shall be used as a resource in the development of the ITS regional architecture.

(b) The ITS regional architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS regional architecture may be developed incrementally as major ITS investments are initiated and updated with subsequent projects. In either case, provision shall be made to include participation from all agencies with which information-sharing is planned as specified in the ITS integration strategy.

(c) The ITS regional architecture shall include, at a minimum, the following:

(1) A "concept of operations" that addresses the roles and responsibilities of participating agencies, existing or required agreements for operations, and resources required to support the project, in order to implement the ITS integration strategy;

(2) A "conceptual design" sufficient to support subsequent project design regarding the following:

(i) System functional requirements;

(ii) Interface requirements and information exchanges with planned and existing systems and subsystems (for example, subsystems and architecture flows as defined in the National ITS Architecture);

(iii) Identification of key standards supporting regional and national interoperability, including uniformity and compatibility of equipment, practices and procedures to deliver ITS services; and

(iv) A prioritization of phases or steps required in implementation.

(d) The ITS regional architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS regional architecture may be developed incrementally as major ITS investment s are initiated and updated with subsequent projects. If the ITS regional architecture is developed incrementally, the ITS projects meeting the criteria specified in 23 CFR 1410.322(b)(11) shall have an ITS architecture at the project level in order to advance to design or preliminary engineering. The ITS architectures developed for specific individual projects or initiatives that meet these criteria shall be coordinated with each other to form an ITS regional architecture.

§ 940.11 Systems engineering analysis.

(a) All ITS projects shall be based on a systems engineering analysis. The National ITS Architecture is a resource that should be used in the development of ITS projects.

(b) The analysis should be on a scale commensurate with the project scope. The basic elements of the analysis are as follows:

(1) Identification of applicable parts of the ITS regional architecture or ITS integration strategy;

(2) Preliminary analysis, including project objectives, existing systems resources, existing and future personnel and budget resources for operations, management and maintenance of systems;

(3) Analysis of alternative system configurations and technology options;

(4) Analysis of procurement options; and

(5) Identification of applicable standards and testing procedures, particularly those that support national interoperability.

§ 940.13 Project implementation.

(a) The project specifications shall ensure that the project accommodates the sharing of electronic information and provides for the functionality and operation (both at the time of project implementation and in the future) between the agencies and jurisdictions as indicated in the ITS integration strategy and/or the ITS regional architecture.

(b) All ITS projects funded with highway trust funds shall use applicable ITS standards that have been officially adopted by the United States Department of Transportation (US DOT).

(c) The ITS standards that are pertinent to the project should be used as they become available, prior to adoption by the US DOT.

(d) All ITS projects funded with highway trust funds shall conduct the applicable interoperability tests that have been officially adopted by the US DOT.

(e) Interoperability tests that are pertinent to the project should be used as they become available, prior to adoption by the US DOT.

§ 940.15 Project administration.

(a) Prior to authorization of highway trust funds for construction or implementation, there shall be a demonstrated linkage to the ITS regional architecture or to the ITS integration strategy, and a commitment to the operations, management and maintenance of the overall system.

(b) Documentation of compliance with the provisions of §§ 940.11 and 940.13 shall be developed by project sponsors. The documentation shall include identification of the portions of the ITS regional architecture and/or ITS integration strategy which are implemented through the project, and the identification of applicable ITS standards and/or interoperability tests that were considered or are specified in the project. Documentation of the rationale and interagency coordination strategies that were carried out to agree upon certain changes shall be provided in the event that any changes are made in the implementation of projects contrary to the ITS regional architecture and/or the ITS integration strategy. In addition, the ITS regional architecture and/or ITS integration strategy shall be updated to reflect the changes.

(c) ITS projects shall be monitored for compliance with this part under normal Federal-aid project oversight procedures.

(d) Prior to (*two years after date of final rule publication in the* ***Federal Register***), the ITS architectures are not required for projects that meet any of the criteria as specified in 23 CFR 1410.322(b)(11). The criteria identify major regional ITS initiatives, ITS projects that affect regional integration of ITS systems, and projects which directly support national interoperability.

(e) In order to ensure that each project identified in 23 CFR 1410.322(b)(11) is coordinated with the evolving regional architecture provided in § 940.9(b), these projects shall be evaluated for institutional and technical integration with transportation systems and services within the region. Based upon this evaluation of the project(s), highway trust fund recipients shall immediately take the appropriate actions to ensure that the project(s) perform the following functions:

(1) Engages a wide range of stakeholders;

(2) Enables the appropriate electronic information sharing between stakeholders;

(3) Facilitates future ITS expansion; and

(4) Uses the applicable ITS standards provided in § 940.13(b).

(f) All ITS projects that advance to design or preliminary engineering must conform with the system engineering and conformity requirements provided in §§ 940.11 on or before (*Insert effective date of final rule*). In the event that an applicable ITS regional architecture or ITS integration strategy does not exist, the applicable portions of the National ITS Architecture shall be identified and used as the basis for analysis.

[FR Doc. 00–13023 Filed 5–19–00; 1:15 pm]

BILLING CODE 4910–22–P

Federal Register

Thursday,
May 25, 2000

Part VI

Department of Transportation

Federal Transit Administration

Request for Comment on the Federal Transit Administration National ITS Architecture Consistency Policy for Project Development; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–99–6417]

Request for Comment on the Federal Transit Administration National ITS Architecture Consistency Policy for Project Development

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration (FTA) announces a Request for Comment on the proposed FTA National ITS Architecture Consistency Policy for project development, which is defined in this document and in the Statewide Transportation Planning; Metropolitan Transportation Planning Notice of Proposed Rulemaking (NPRM published separately in today's **Federal Register**). The Metropolitan and Statewide Planning Process, as it relates to ITS projects, is summarized in this notice for clarity. However, comments on the planning process should be directed to Docket No. FHWA–99–5933, docket for the NPRM. Comments on the project development policy, including answers to the questions asked in Section X, should be submitted to this docket. The Major Capital Investments rule, when made final, will also reference the National ITS Architecture Policy. The National ITS Architecture Policy statement is a product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA–21) (P.L. 105–178) enacted on June 9, 1998. This notice proposes to require development of an ITS regional architecture, consisting of a concept of operations and a conceptual design, which draws from the National ITS Architecture but is tailored to address the local situation and ITS investment needs. This notice also proposes to require use of applicable standards and interoperability tests adopted by the United States Department of Transportation (US DOT). The proposal recommends the use of the National ITS Architecture and provisional standards and interoperability tests.

DATES: Comments shall be submitted by August 23, 2000.

ADDRESSES: All signed, written comments must refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For Technical Information: Ron Boenau, Chief, Advanced Public Transportation Systems Division (TRI–11), at (202) 366–0195 or Brian Cronin, Advanced Public Transportation Systems Division (TRI–11), at (202) 366–8841. *For Legal Information:* Linda Sorkin, Office of the Chief Council (202) 366–1936. The FTA is located at 400 Seventh Street, SW, Washington, DC 20590. This notice is posted on the FTA website on the Internet under http://www.fta.dot/gov.

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded 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's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Contents

I. Definitions

Intelligent Transportation Systems (ITS), as defined in TEA–21, means electronics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

ITS Integration Strategy means a systematic plan for coordinating and implementing ITS investments funded with highway trust funds to achieve an integrated regional transportation system.

ITS project means any project that, in whole or in part, funds the acquisition of technologies or systems of technologies (e.g. computer hardware or software, traffic control devices, communications links, electronic fare payment system, passenger information system, and automatic vehicle location system) that provide or contribute to the provision of one or more ITS user services as defined in the ITS National ITS Architecture.

ITS Regional Architecture means a regional framework for ensuring institutional agreement and technical integration of technologies for the implementation of projects or groups of projects under an ITS Integration Strategy.

National ITS Architecture (also "national architecture") means a common framework for ITS integration and interoperability. The National ITS Architecture comprises the logical architecture and physical architecture that satisfy a defined set of user services. The logical architecture defines the functions and information flows, and guides the development of functional requirements for new systems and improvements. The physical architecture defines how the system should provide the required functionality defined in the logical architecture.

A *region* is a geographical area that is based on local needs for sharing information and coordinating operational strategies in order to address transportation problems. The size of the region should be chosen to optimize integration of transportation systems by fostering the exchange of information on operating conditions across ITS systems and across a number of agencies and jurisdictions.

II. Background

Section 5206(e) of TEA–21 requires that the Secretary of the DOT must

> "Ensure that intelligent transportation system projects carried out using funds made available from the Highway Trust Fund, * * * conform to the national architecture, applicable standards or provisional standards, and protocols developed under subsection(a)."

On October 2, 1998, the DOT issued Interim Guidance on Conformity with the National ITS Architecture and Standards. The Interim Guidance reflects input received from Federal, State, local, and private sector transportation stakeholders in conjunction with the national transportation association forums and 10 outreach sessions held across the Nation in the spring of 1998. The intent of the Interim Guidance is to:

- Foster integration.
- Encourage the incorporation of ITS into the transportation planning process, and
- Focus on near-term ITS projects with the greatest potential for affecting regional integration.

The Interim Guidance is available on the DOT website at *www.its.dot.gov*, and will remain in effect until the adoption of a final policy. The National ITS Architecture Policy presented in this proposal reflects comments from the transportation industry on the Interim Guidance.

The objectives for the FTA's National ITS Architecture Policy for project development are to:

- Provide requirements for ITS project development for projects implemented wholly or partially with highway trust funds.
- Achieve system integration (*e.g.* seamless traveler information system that electronically combines traveler information data from multiple transportation agencies in a region) for projects funded through the highway trust fund with all other projects contained in the ITS Integration Strategy.
- Engage stakeholders (state DOT's, transit agencies, public safety agencies, other transportation operating agencies).
- Enable electronic information and data sharing among stakeholders.
- Facilitate future expansion capability of the transportation infrastructure.
- Foster interoperability.
- Save design time through use of the National ITS Architecture.

FTA has developed this proposed policy to meet the TEA–21 requirement contained in Section 5206(e) and the DOT/FTA goal to encourage effective deployment of ITS projects. Additionally, DOT and FTA encourage the coordination of local ITS strategies and projects to help meet national and local goals for mobility, accessibility, safety, security, economic growth and trade, and environment.

The National ITS Architecture documents were developed by the US DOT, and are updated on an as-needed basis. The latest addition to the National ITS Architecture is the Archive Data User Service, which provides the ability to store and process data over an extended period of time. FTA is pursuing the addition of a Rail ITS user service within the National ITS Architecture. New versions of the documents, when they are issued, will be available from the US DOT in hard copy and electronic format on the DOT website at *www.its.dot.gov*. Version 3.0 is the latest version of the National ITS Architecture.

III. Statewide and Metropolitan Planning Processes

FTA and FHWA have developed an approach for coordinating this policy with requirements for statewide and metropolitan transportation planning processes. The proposed approach, contained in the Statewide Transportation Planning; Metropolitan Transportation Planning NPRM (published elsewhere in today's **Federal Register**), explains how ITS is proposed to be integrated into the planning process. The Metropolitan and Statewide Planning Process, as it relates to ITS projects, is summarized in this section for clarity. However, comments on the planning process should be directed to Docket Number FHWA–99–5933, docket for the NPRM.

The approach in the NPRM includes the provision that states and MPOs are to develop a locally defined ITS Integration Strategy to guide future investment decisions and foster integration and interoperability [See the following sections: §§ 1410.104, 1410.322(b)(11), 1410.214 (a)(3), and 1410.216(c)(8)]. Included in development of the strategy, at a minimum, are highway, transit, and public safety agencies, appropriate federal lands agencies, state motor carrier agencies as appropriate, and other operating agencies necessary to fully address ITS integration. The Integration Strategy shall assess existing and future ITS systems, functions and electronic information sharing expectations. Unique regional ITS initiatives shall be identified in the Integration Strategy. Under the section for planning agreements [See Section 1410.310(i)], the NPRM also calls for an agreement among the MPO, the state DOT, the transit operator, and other agencies identified in the Integration Strategy. This agreement shall address policy and operational issues, including at a minimum ITS project interoperability, utilization of ITS related standards, and the routine operation of the projects identified in the ITS Integration Strategy.

IV. ITS Regional Architecture

The proposed requirements contained in this section have been developed to facilitate the interoperability of projects funded through the highway trust fund (including the mass transit account) with other projects included in the ITS Integration Strategy. FTA proposes the development of an ITS Regional Architecture for implementing the ITS Integration Strategy per 49 CFR 1410.322(b)(11) and 1410. 214(a)(3) to guide the development of specific projects and programs. The FTA proposes to require that the ITS Regional Architecture conform with the applicable ITS Integration Strategy. This proposal suggests that the National ITS Architecture shall be used as a resource in the development of the ITS Regional Architecture.

The ITS Regional Architecture may be developed either as an initial project development effort and updated as projects are initiated, or the ITS Regional Architecture may be developed incrementally as major ITS investments are initiated and updated with subsequent projects.

Major ITS investments include the following three project categories:

- Unique regional ITS initiatives (a program of related projects) that are multi-jurisdictional and/or multi-modal,
- ITS projects that affect regional integration of ITS systems, and
- Projects which directly support national interoperability.

In either case, it is proposed that provision should be made to include participation from all agencies with which information-sharing is planned as specified in the ITS Integration Strategy.

This proposal recommends that the ITS Regional Architecture include, at a minimum and scalable to the size of the region, the following:

A. A concept of operations addressing: The roles and responsibilities of participating agencies and existing or required agreements for operations and resources required to support the project;

B. A conceptual design sufficient to support subsequent project design regarding system functional requirements; interface requirements and information exchanges with planned and existing systems and subsystems (for example, subsystems and architecture flows as defined in the National ITS Architecture); identification of key standards supporting national interoperability, including uniformity and compatibility of equipment, practices, and procedures to deliver ITS services; and, it must establish a priority of phases or steps required for implementation.

ITS projects that are considered to be major ITS investments are proposed to have an ITS project architecture developed that includes a concept of operations and conceptual design as defined above. The ITS project architecture could then serve as the initial ITS Regional Architecture, or if an ITS Regional Architecture exists, could be used to update the existing ITS Regional Architecture.

V. ITS Projects

This proposal recommends that all projects funded through the highway trust fund (including the mass transit account) shall be consistent with the ITS Integration Strategy, the inter-

agency agreement, and the ITS Regional Architecture and shall be coordinated with other ITS projects in the state/region. Additionally, it is proposed that the National ITS Architecture shall be used as a resource for interoperability and integration. This proposal recommends that projects financed by FTA are required to be consistent with DOT requirements for standards and interoperability testing as they are officially adopted by DOT. In the interim, grantees should use applicable standards and testing procedures.

As proposed, the project specifications will be required to ensure that the project accommodates the sharing of electronic information and provides for the functionality and operation (both at the time of project implementation and in the future) between the agencies and jurisdictions as indicated in the ITS Integration Strategy and/or the ITS Regional Architecture.

VI. Documentation

This Notice proposes to require documentation of proposed ITS requirements be included in project documents. Documentation will also be required to include identification of the portions of the ITS Regional Architecture and/or ITS Integration Strategy, which are implemented through the project, and the identification of applicable ITS standards and/or interoperability tests that were considered or specified in the project. Any changes made in project design that impact the ITS Integration Strategy or ITS Regional Architecture are proposed to require to be documented. This Notice proposes that documentation of the rationale and interagency coordination strategies that were carried out to agree upon certain changes will be required to be provided in the event that any changes are made in the implementation of projects contrary to the ITS Integration Strategy or ITS Regional Architecture. In addition, this Notice proposes that the ITS Regional Architecture and/or ITS Integration Strategy be required to be updated to reflect the changes.

VII. Phasing

This proposal suggests the phasing to be as follows:

- Prior to (insert the date two years after date of the final policy publication in the **Federal Register**) the development of an ITS Regional Architecture and subsequent ITS project architectures will not be required for projects that meet the requirements for Major ITS Investments.
- All ITS projects that involve preliminary engineering, including system engineering, and which advance to final design must conform to the requirements for ITS Projects on or before (insert effective date of final policy).
- In the event that an applicable ITS Integration Strategy or ITS Regional Architecture does not exist, the applicable portions of the National ITS Architecture will be required to be identified and used as the basis for analysis.
- All National ITS Architecture Consistency Policy requirements will be required to apply on (insert date two years after effective date of final policy).

VIII. Oversight

This Notice proposes to require grantees to self-certify that they have met the National ITS Architecture consistency requirements. Existing FTA Oversight procedures will be used to verify self-certifications. FTA has allocated FTA Oversight funds from the fiscal year 1999 oversight budget to be used to provide the initial oversight and technical assistance to grantees regarding this policy.

IX. FTA Guidance

FTA will develop appropriate guidance materials regarding the National ITS Architecture consistency requirements upon completion of the Statewide Transportation Planning; Metropolitan Transportation Planning NPRM process and after the comment period regarding this policy.

X. Questions

In order to facilitate focused comments, FTA is asking the following questions regarding the proposed National ITS Architecture Consistency Policy for Project Development.

1. Do reviewers understand the definition of a major ITS investment as defined in Section IV, "ITS Regional Architecture," or is more clarification needed, and if so please explain?
2. Do reviewers understand the definition of an ITS project, or is more clarification needed, and if so please explain?
3. Do reviewers understand the difference between a major ITS investment, and an ITS project, or is more clarification needed, and if so please explain?
4. Are the requirements for development of a Regional Architecture clear? If not, what is not clear about the requirement?
5. What additional guidance, if any, is required to explain how to implement this proposed policy?
6. The proposed rule allows regions to develop a Regional Architecture as a separate activity, or incrementally as major ITS investments are developed within a region. Do reviewers anticipate particular difficulties with implementing and documenting either approach?
7. Do reviewers understand the relationships between the Integration Strategy, the ITS Regional Architecture, and the ITS Project Architecture?
8. What additional guidance, if any, is required regarding phasing of this rule?
9. Are the oversight and documentation requirements clear? If not, what is not clear about the requirements?

Issued on: May 18, 2000.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 00–12913 Filed 5–19–00; 1:15 pm]

BILLING CODE 4910–57–P

Federal Register

Thursday,
May 25, 2000

Part VII

Department of Education

William D. Ford Federal Loan Program; Notice

DEPARTMENT OF EDUCATION

William D. Ford Federal Direct Loan Program

AGENCY: Department of Education.

ACTION: Notice of the annual updates to the income contingent repayment (ICR) plan formula.

SUMMARY: The Secretary announces the annual updates to the ICR Plan formula for 2000. Under the William D. Ford Federal Direct Loan (Direct Loan) Program, borrowers may choose to repay their student loans under the ICR plan, which bases the repayment amount on the borrower's income, family size, loan amount, and interest rate. Each year, the formula for calculating a borrower's payment is adjusted to reflect changes due to inflation. This notice contains the required updates based on inflation, which are examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts. These updates are effective from July 1, 2000 to June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Don Watson, U.S. Department of Education, Room 3045, ROB–3, 400 Maryland Avenue, SW., Washington, DC 20202–5400. Telephone: (202) 708–8242. 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.

SUPPLEMENTARY INFORMATION: Direct Loan Program borrowers may choose to repay their Direct Loans under the ICR Plan. The attachment to this Notice provides updates to four sources of information: examples of how the calculation of the monthly ICR amount is performed, the income percentage factors, the constant multiplier chart, and charts showing sample repayment amounts.

We have updated the income percentage factors to reflect changes based on inflation. We have revised the income percentage factor table by changing the dollar amounts of the incomes shown by a percentage equal to the estimated percentage change in the Consumer Price Index for all Urban Consumers from December 1999 to December 2000. Further, we provide examples of monthly repayment amount calculations and two charts that show sample repayment amounts for single, and married or head of household borrowers at various income and debt levels based on the updated income percentage factors.

The updated income percentage factors, at any given income, may cause a borrower's payments to be slightly lower than they were in prior years. This updated amount more accurately reflects the impact of inflation on a borrower's current ability to repay.

Electronic Access to This Document

You may review 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 the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html
To use the PDF, you must have the Adobe Acrobat Reader, 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 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 84.268, William D. Ford Federal Direct Loan Program)

Program Authority: 20 U.S.C. 1087 *et seq.*

Dated: May 19, 2000.

Greg Woods,

Chief Operating Officer.

Attachment: Examples of the Calculations of Monthly Repayment Amounts

Example 1. This example assumes you are a single borrower with $15,000 in Direct Loans, the interest rate being charged is 8.25 percent, and you have an adjusted gross income (AGI) of $30,713.

Step 1: Determine your annual payments based on what you would pay over 12 years using standard amortization. To do this, multiply your loan balance by the constant multiplier for 8.25 percent interest (0.1315449). The constant multiplier is a factor used to calculate amortized payments at a given interest rate over a fixed period of time. (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart below to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 × $15,000 = $1,973.17

Step 2: Multiply the result of Step 1 by the income percentage factor shown in the income percentage factor table that corresponds to your income and the divide the result by 100. (If your income is not listed in the income percentage factor table, calculate the applicable income percentage factor by following the instructions under "Interpolation" below.):

- 88.77 × $1,973.17 ÷ 100 = $1,751.58

Step 3: Determine 20 percent of your discretionary income. Because you are a single borrower, subtract the poverty level for a family of one, as published in the **Federal Register** on February 15, 2000 (65 FR 7555), from your income and multiply the result by 20%:

- $30,713 − $8,350 = $22,363
- $22,363 × 0.20 = $4,472.60

Step 4: Compare the amount from Step 2 with the amount from Step 3. The lower of the two will be your annual payment amount. In this example, you will be paying the amount calculated under Step 2. To determine your monthly repayment amount, divide the annual amount by 12.

- $1,751.58 ÷ 12 = $145.97

Example 2. In this example, you are married. You and your spouse have a combined AGI of $58,040 and are repaying your loans jointly under the ICR plan. You have no children. You have a Direct Loan balance of $10.000, and your spouse has a Direct Loan balance of $15,000. Your interest rate is 8.25 percent.

Step 1: Add your and your spouse's Direct Loan balances together to determine your aggregate loan balance:

- $10,000 + $15,000 = $25,000

Step 2: Determine the annual payment based on what you would pay over 12 years using standard amortization. To do this, multiply your aggregate loan balance by the constant multiplier for 8.25 percent interest (0.1315449). (The 8.25 percent interest rate used in this example is the maximum interest rate charged for all Direct Loans excluding Direct PLUS Loans and may not be your actual interest rate. You can view the constant multiplier chart below to determine the constant multiplier that you should use for the interest rate on your loan. If your exact interest rate is not listed, use the next highest for estimation purposes.)

- 0.1315449 x $25,000 = $3,288.62

Step 3: Multiply the result by the income percentage factor shown in the income percentage factor table that corresponds to your and your spouse's income and divide the result by 100. (If your and your spouse's aggregate income is not listed in the income percentage factor table, calculate the applicable income percentage factor by following the instructions under "Interpolation" below.):

- 109.40 x $3,288.62 ÷ 100 = $3,597.75

Step 4: Determine 20 percent of your aggregate income. To do this, subtract the poverty level for a family of 2, as published in the **Federal Register** on February 15, 2000 (65 FR 7555), from your aggregate income and multiply the result by 20 percent:

- $58,040 − $11,250 = $46,790
- $46,790 x 0.20 = $9,358

Step 5: Compare the amount from Step 3 with the amount from Step 4. The lower of the two will be your annual payment amount. You and your spouse will pay the amount calculated under Step 3. To determine your monthly repayment amount, divide the annual amount by 12.

- $3,597.75 ÷ 12 = $299.81

Interpolation: If your income does not appear on the income percentage factor table, you will have to calculate the income percentage factor through interpolation. For example, assume you are single and your income is $25,000.

Step 1: Find the closest income listed that is less than your income of $25,000 and the closest income listed that is greater than your income of $25,000.

Step 2: Subtract the lower amount from the higher amount (for this discussion, we will call the result the "income interval"):

- $30,713 − $24,452 = $6,261

Step 3: Determine the difference between the two income percentage factors that are given for these incomes (for this discussion, we will call the result, the "income percentage factor interval"):

- 88.77% − 80.33% = 8.44%

Step 4: Subtract from your income the closest income shown on the chart that is less than your income of $25,000:

- $25,000 − $24,452 = $548

Step 5: Divide the result by the income interval determined in Step 2:

- $548 ÷ $6,261 = 0.08753

Step 6: Multiply the result by the income percentage factor interval:

- 0.08753 x 8.44% = .73875%

Step 7: Add the result to the lower of the two income percentage factors used in Step 3 to calculate the income percentage factor interval for $25,000 in income:

- .73878% + 80.33% = 81.07% (rounded to the nearest hundredth)

The result is the income percentage factor that will be used to calculate the monthly repayment amount under the ICR Plan.

INCOME PERCENTAGE FACTORS

[Based on annual income]

Single		Married/head of household	
Income	Percent factor	Income	Percent factor
8,028	55.00	8,028	50.52
11,047	57.79	12,669	56.68
14,215	60.57	15,098	59.56
17,455	66.23	19,738	67.79
20,550	71.89	24,452	75.22
24,452	80.33	30,713	87.61
30,713	88.77	38,518	100.00
38,520	100.00	46,327	100.00
46,327	100.00	58,040	109.40
55,679	111.80	77,555	125.00
71,295	123.50	104,879 ...	140.60
100,977 ...	141.20	146,678 ...	150.00

INCOME PERCENTAGE FACTORS—Continued

[Based on annual income]

Single		Married/head of household	
Income	Percent factor	Income	Percent factor
115,780 ...	150.00	239,683 ..	200.00
206,224 ...	200.00		

CONSTANT MULTIPLIER CHART FOR 12-YEAR AMORTIZATION

Interest rate (percent)	Annual constant multiplier
7.00	0.1234057
7.25	0.1250107
7.46	0.1263678
7.50	0.1266272
7.75	0.1282550
8.00	0.1298943
8.25	0.1315449
8.38	0.1324076
8.50	0.1332067
8.75	0.1348796
9.00	0.1365637

[FR Doc. 00–13101 Filed 5–24–00; 8:45 am]
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Federal Register

Thursday,
May 25, 2000

Part VIII

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Source Categories; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6706–1]

National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interpretative rule.

SUMMARY: This interpretative rule clarifies the construction by EPA of the applicability of sections 112(g) and 112(j) of the Clean Air Act (CAA), and of the regulations implementing these provisions for stationary combustion turbines in Subpart B—Requirements for Control Technology Determinations for Major Sources in Accordance With Clean Air Act Sections 112(g) and 112(j).

Specifically, EPA has determined that case-by-case maximum achievable control technology (MACT) determinations under subpart B must be made for all new or reconstructed major source stationary combustion turbines, regardless of whether they are part of a combined cycle system. Waste heat recovery units, including duct burners, which are part of a combined cycle system are considered to be steam generating units. New or reconstructed waste heat recovery units would not be subject to case-by-case MACT determinations under subpart B if they are electric utility steam generating units.

Elsewhere in today's **Federal Register**, EPA is withdrawing the interpretative rule as published on April 21, 2000, at 65 FR 21636. This final interpretative rule supersedes the interpretative rule erroneously published at 65 FR 21636.

EFFECTIVE DATE: June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Sims Roy, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5263, facsimile: (919) 541–5450, electronic mail address: *roy.sims@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated entities. Stationary combustion turbines which meet the criteria for major sources are the regulated entities addressed by this interpretative rule.

I. Why Is EPA Issuing This Interpretative Rule?

The EPA has decided to issue this interpretative rule to resolve an ambiguity in the construction of the exclusion for electric utility steam generating units set forth in 40 CFR 63.40(c). That provision states, "The requirements of [40 CFR part 63, subpart B] do not apply to electric utility steam generating units unless and until such time as these units are added to the source category list pursuant to section 112(c)(5) of the Act." This applicability exclusion was intended to limit the need for case-by-case MACT determinations for new or reconstructed sources under CAA section 112(g) and 40 CFR 63.40–63.44, but the same exclusion would also generally apply to case-by-case MACT determinations for new and existing sources pursuant to CAA section 112(j).

The term "electric utility steam generating unit" is defined in CAA section 112(a)(8) and at 40 CFR 63.41, as follows:

> The term "electric utility steam generating unit" means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

The EPA explained its reasoning for the electric utility steam generating unit exclusion in the preamble to the final rule implementing CAA section 112(g) for new and reconstructed major sources (61 FR 68387, December 27, 1996). We noted that CAA section 112(n)(1) required us to perform a study of the hazards to public health associated with hazardous air pollutants (HAP) emissions from electric utility steam generating units. After completing the required study and considering the results, we are authorized to regulate such units under CAA section 112 if we determine such regulation is appropriate and necessary. We have not at this time made a determination whether such regulation is appropriate and necessary, but we are required by court order to make a determination by December 15, 2000. We excluded electric utility steam generating units from case-by-case MACT determinations under section 112(g) because we concluded that such determinations should only be made for sources which would otherwise be subject to section 112 MACT standards.

Stationary combustion turbines were included on the list of source categories issued pursuant to CAA section 112(c)(1), and we are, therefore, required to issue a MACT standard applicable to this category pursuant to CAA section 112(d). Proposal of the MACT standard for this source category is anticipated in late 2000, with promulgation in early 2002.

Stationary combustion turbines may be used to generate electricity. These stationary combustion turbines are sometimes combined with waste heat recovery units which generate steam by extracting heat from the exhaust gases (*i.e.*, combined cycle systems). The fact that stationary combustion turbines can be used to generate electricity has created some ambiguity about whether combustion turbines used in this manner are considered electric utilities.

On the one hand, EPA believes that the most reasonable construction of the statutory definition of electric utility steam generating units would not include any stationary combustion turbine, regardless of whether it is used by an electric utility to generate electricity, and regardless of whether it is attached to a waste heat recovery unit which generates steam. Accordingly, we are developing a MACT standard to regulate emissions from all stationary combustion turbines pursuant to CAA section 112(d).

On the other hand, we also recognize that the first sentence of the statutory definition creates ambiguity concerning whether an electric utility unit must even generate steam to be included. This ambiguity has been compounded by the language in the preamble to the final section 112(g) rule, which predicates the exclusion for electric utilities based on the study performed pursuant to CAA section 112(n)(1). That study did, in fact, include some very limited consideration of stationary combustion turbines. In light of these ambiguities, different permitting authorities have reached differing conclusions concerning whether a case-by-case MACT determination under section 112(g) is required for new or reconstructed major source stationary combustion turbines. At various times, offices within EPA have also given differing interpretations concerning whether a case-by-case MACT determination is required for such facilities.

This interpretative rule is intended to clearly resolve the ambiguity in the construction of 40 CFR 63.40(c) as applied to stationary combustion turbines. This interpretative rule will become legally effective and binding on June 26, 2000. After that date, all EPA offices and permitting authorities must adhere to this interpretative rule. Those EPA offices and permitting authorities who become aware of this interpretative rule, or the construction of the statute set forth herein, prior to the effective

date should adopt this construction to the full extent it is practicable to do so. However, EPA will not seek to revisit the legality of, or to otherwise reconsider, any final actions previously taken in good faith based on a conclusion that stationary combustion turbines used to generate electricity fall within the exclusion.

II. What Is the Agency's Interpretation?

The EPA construes the term "electric utility steam generating unit," as defined by CAA section 112(a)(8) and 40 CFR 63.41, to exclude all stationary combustion turbines, regardless of whether or not such turbines are utilized to generate electricity or utilized by an electric utility, and regardless of whether or not such turbines are utilized in conjunction with waste heat recovery units (*i.e.*, combined cycle systems). Therefore, a case-by-case MACT determination is required for each new or reconstructed stationary combustion turbine which is a major source.

The phrase "steam generating unit" in the term "electric utility steam generating unit" is critical to interpreting which types of combustion units are covered by this definition and which types are not. The definition clearly covers a conventional fossil fuel fired steam generating unit (*e.g.*, coal-fired boiler) which extracts heat from the combustion of fuel and generates steam for use in a steam turbine, which in turn provides shaft power to spin an electric generator and generate electricity.

However, we do not believe this term was intended to cover a stationary combustion turbine which extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. Such a combustion turbine does not extract heat to generate steam. In fact, there is no steam generated at all in a combustion turbine. Hence, we conclude that the term "electric utility steam generating unit" does not include any stationary combustion turbine, and that such turbines must be regulated under a section 112(d) MACT standard or a section 112(j) determination. Moreover, a case-by-case MACT determination under section 112(g) is required for any new or reconstructed stationary combustion turbine which is a major source.

This reasoning can be further applied to combined cycle systems. For purposes of this discussion, a combined cycle system is a combination of a stationary combustion turbine and a waste heat recovery unit.

In a combined cycle system, a combustion turbine extracts shaft power from the combustion of fuel and spins an electric generator to generate electricity. The hot exhaust gases from the combustion turbine are then routed to a separate "waste heat recovery unit." The waste heat recovery unit extracts heat from the gases and generates steam for use in a steam turbine, which in turn provides shaft power to spin an electric generator and generate electricity.

The combustion turbine in a combined cycle system does not generate steam. It is not a "steam generating unit" and, therefore, is not an "electric utility steam generating unit."

However, we also conclude that, because the waste heat recovery unit in a combined cycle system does generate steam, it is a steam generating unit. Whether a waste heat recovery unit in a new or reconstructed combined cycle system is subject to a case-by-case MACT is a moot point in many cases because the waste heat recovery unit is not an emission source. The emissions from the combustion turbine pass through the waste heat recovery unit, but the waste heat recovery unit is not a source of additional emissions.

There is another type of combined cycle system, however, in which the waste heat recovery unit does contribute additional emissions. In these types of combined cycle systems, fuel is burned in the duct, through the use of "duct burners," just before the gases enter the waste heat recovery unit.

These duct burners are analogous to the burners in steam generating units (*i.e.*, boilers). Their only purpose is to burn fuel to generate more heat for extraction by the waste heat recovery unit in order for it to generate more steam. As a result, duct burners (where they are used) are considered part of the waste heat recovery unit in a combined cycle system—just as the burners in a boiler are considered part of the boiler.

Duct burners in combined cycle systems normally burn natural gas. Although it is unlikely that sufficient natural gas would be burned in a duct burner in a combined cycle system to result in emissions that would themselves exceed the major source threshold, a combined cycle system may have aggregate emissions which exceed the major source threshold. Therefore, in each instance where a stationary combustion turbine in a combined cycle system must meet MACT requirements because it is a major source of HAP, an associated duct burner will also be subject to MACT requirements unless it is found to be an electric utility steam generating unit. It is also possible that there could be instances where emissions from a duct burner in a waste heat recovery unit which is not an electric utility steam generating unit could cause the total emissions from a combined cycle system to exceed the major source threshold.

If the waste heat recovery unit in a combined cycle system operates with duct burners, and more than one-third of the potential electrical output capacity of the duct burners and more than 25 megawatts of the electrical output provided by the duct burners are provided to any utility power distribution system for sale, then the waste heat recovery unit is an electric utility steam generating unit and is not subject to case-by-case MACT determinations unless and until such units are added to the source category list pursuant to CAA section 112(c)(5). However, if the waste heat recovery unit in a combined cycle system operates with duct burners and less than one-third of the potential electrical output capacity of the duct burners or less than 25 megawatts of the electrical output provided by the duct burners are provided to any utility power distribution system for sale, then the waste heat recovery unit must also meet MACT requirements if the aggregate HAP emissions from the combined cycle system exceed the major source threshold.

III. What Additional Information Is Available?

As mentioned above, EPA is developing MACT standards for stationary combustion turbines. This effort has resulted in collection of information regarding the performance, as well as the costs, associated with the use of various technologies to reduce emissions of HAP from stationary combustion turbines.

In conjunction with today's interpretative rule, EPA is making available two memoranda, the first entitled, "Hazardous Air Pollutant (HAP) Emission Control Technology for New Stationary Combustion Turbines," and the second entitled, "Oxidation Catalyst Costs for New Stationary Combustion Turbines." These two memoranda compile and summarize information collected by EPA and may be of assistance in making any required case-by-case MACT determinations. These memoranda may be obtained by contacting EPA as shown under **FOR FURTHER INFORMATION CONTACT** or downloaded directly by logging on to the following EPA website: http://www.epa.gov/ttn/uatw/combust/turbine/turbpg.html.

IV. Why Is EPA Withdrawing the Interpretative Rule Published on April 21, 2000?

An error by EPA led to publication of a preliminary draft of the interpretative rule on April 21, 2000 at 65 FR 36321.

V. What Are the Impacts Associated With This Interpretative Rule?

As mentioned above, this interpretative rule simply resolves current ambiguity concerning the applicability of CAA section 112 to new or reconstructed major source stationary combustion turbines. It is not intended to subject these entities to any new or additional regulatory requirements.

VI. What Is the Applicability of Other Review Requirements?

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this interpretative rule is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget.

Section 553(b)(3)(A) of the Administrative Procedure Act provides that interpretative rules are not subject to notice-and-comment requirements. Interpretative rules which do not involve the internal revenue laws of the United States are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because notice-and-comment requirements do not apply to this interpretative rule, this rule is also not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532 and 1535).

In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This interpretative rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This interpretative rule will not have significant direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This interpretative rule is also not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This interpretative rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

In issuing this interpretative rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the interpretative rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This interpretative rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The EPA's compliance with these statutes and Executive Orders for the underlying rule interpreted herein is discussed in the March 29, 1996 **Federal Register** document (61 FR 14029).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We have established an effective date of June 26, 2000. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air emissions control, Hazardous air pollutants, Combustion turbines.

Dated: May 18, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–13196 Filed 5–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6706–2]

National Emission Standards for Hazardous Air Pollutants for Source Categories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of interpretative rule.

SUMMARY: The EPA is withdrawing the interpretative rule published in the **Federal Register** on April 21, 2000, at 65 FR 21363. That interpretative rule was intended to clarify the construction by EPA of the applicability of sections 112(g) and 112(j) of the Clean Air Act (CAA) to all stationary combustion turbines and waste heat recovery units in combined cycle systems.

An administrative error led to publication of a preliminary draft of the interpretative rule, rather than the final interpretative rule EPA intended to publish. Concurrent with this withdrawal of the incorrect version of the interpretative rule published on April 21, 2000, EPA is publishing elsewhere in today's **Federal Register** a corrected version of the interpretative rule.

DATES: On May 25, 2000, EPA hereby withdraws the interpretative rule published at 65 FR 21363. The corrected interpretative rule will become legally effective on June 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information, contact Sims Roy, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541–5263, facsimile: (919) 541–5450, electronic mail address: *roy.sims@epa.gov.*

Dated: May 18, 2000.

Robert Perciasepe,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 00–13197 Filed 5–24–00; 8:45 am]

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Federal Register

Thursday,
May 25, 2000

Part IX

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 990901241–0116–02; I.D. 123198B]

RIN 0648–AM09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) issues regulations to govern the unintentional take of a small number of marine mammals incidental to construction and operation of offshore oil and gas facilities at the Northstar development in the Beaufort Sea in state and Federal waters. Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize BPXA's activity as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective May 25, 2000, until May 25, 2005.

ADDRESSES: A copy of the updated application, Technical Monitoring Plan, Biological Opinion, Environmental Assessment (EA), and a list of the references used in this document may be obtained by writing to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055, Brad Smith, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s) of affected marine mammals, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

Summary of Request

On November 30, 1998, NMFS received an application for Letters of Authorization (LOAs) granting an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from BPXA to take marine mammals incidental to construction and operation of offshore oil and gas facilities at the Northstar and Liberty developments in the Beaufort Sea in state and Federal waters. On March 1, 1999 (64 FR 9965), NMFS published an advance notice of proposed rulemaking (ANPR) on BPXA's application and invited interested persons to submit comments, information, and suggestions concerning the application, and the structure and content of regulations if the application is accepted. During the 30-day comment period on that notice, comments were received from the Marine Mammal Commission (MMC), Greenpeace Alaska (Greenpeace), the Alaska Eskimo Whaling Commission (AEWC), the North Slope Borough (NSB), and the Inupiat Community of the Arctic Slope. Those comments were addressed in the preamble to the proposed rule which was published on October 22, 1999 (64 FR 57010).

Because of delays in construction during 1999, and in issuing a proposed rule on this matter, on October 1, 1999, BPXA updated their application to NMFS. Among other things, the revised application removed from this rulemaking a request for a take of marine mammals incidental to construction and operation at Liberty. The revised application is available upon request (see **ADDRESSES**). Following is a brief description of the proposed scope of work for the Northstar project. For more detailed descriptions please refer to the BPXA application.

Description of the Activity

BPXA proposes to produce oil from the Northstar Unit offshore oil development. This development will be the first in the Beaufort Sea that uses a subsea pipeline to transport oil to shore and then into the Trans-Alaska Pipeline System. The Northstar Unit is located on Seal Island between 2 and 8 miles (mi)(3.2 and 12.9 kilometers (km)) offshore from Pt. Storkersen, AK. This unit is adjacent to the Prudhoe Bay industrial complex and is approximately 54 mi (87 km) northeast of Nuiqsut, a Native Alaskan community.

Construction began in December 1999 with the construction of ice roads. Both island construction and offshore pipeline installation is scheduled to occur in 2000. Construction activity includes the construction of several ice roads, one from West Dock and Pt. McIntyre to the Northstar gravel mine, one from the Kuparuk River delta mine site to Seal Island, and one along the pipeline route to Seal Island. The gravel-haul road will have a parallel alternate road to transport service equipment, construction materials and alternate gravel hauling when maintenance or repair of the main ice road is required. In addition to these main ice roads it is expected that three to four access roads will be cleared of snow to allow light vehicle traffic between the pipeline construction activities and the gravel-haul ice road. These on-ice access roads will have the snow cleared regularly, with intermittent flooding to maintain safe traffic conditions.

It is estimated that during the winter approximately 16,800 large-volume haul trips between the onshore mine site and a reload area in the vicinity of Egg Island, and 28,500 lighter dump truck trips from Egg Island to Seal Island will be necessary to transport construction

gravel to Seal Island. An additional 300 truck trips will be necessary to transport concrete-mat slope protection materials to the island.

Construction of a gravel island work surface for drilling and oil production facilities, and the construction and installation of two 10–inch (0.25–m) pipelines, one to transport crude oil and one for gas for field injection, will take place during the winter and into the open water season of 2000, while the transport and installation of the drill rig and associated equipment will occur during the summer, ending around September 1, 2000. The two pipelines will be buried together in a single trench. During the summer barges are expected to make approximately 90 to 100 round-trips from Prudhoe Bay or Endicott to support construction.

The operational phase will begin with drilling as early as the fourth quarter of 2000, and will continue for about 2 years. Power will be supplied by diesel generators. This phase of drilling will temporarily cease in mid-2001 to allow installation and start-up of process facilities. Drilling is expected to resume about November 2001. Drilling will continue until 23 development wells (15 production, 7 gas injection) are drilled. After drilling is completed, only production-related site activities will occur. In order to support operations at Northstar, the proposed operations activity includes the annual construction of an ice road from Pt. McIntyre to the shore crossing of the pipeline and along the pipeline route to Seal Island. Ice roads will be used to resupply needed equipment, parts, foodstuffs, and products, and for hauling wastes back to existing facilities. During the summer, barge trips will be required between West Dock or Endicott and the island for resupply.

Year-round helicopter access to Northstar is planned for movement of personnel, foodstuffs and emergency movement of supplies and equipment. Helicopters will fly at an altitude of at least 1,000 ft (305 m), except for takeoffs, landings, and safe-flight operations.

Comments and Responses

On October 22, 1999 (64 FR 57010), NMFS published a notice of proposed rulemaking on BPXA's application and invited interested persons to submit comments, information, and suggestions concerning the application and proposed rule. During the 60-day comment period on that notice, comments were received from BPXA, the MMC, Greenpeace, the NSB, and the AEWC. Their comments are addressed here.

Activity Concerns

Comment 1: The NSB believes that the Northstar Project area analysis should not be limited to the area immediately adjacent to Seal Island and the pipeline corridor, but expanded to also include the proposed sealift route, and any other route to be used by ocean-going vessels in support of the project, aircraft and vessel paths, and any ice-free corridors to be maintained to facilitate oil spill response.

Response: NMFS agrees that a small number of takings by harassment of marine mammals could occur as a result of these activities, which were addressed in BPXA's application. However, it is NMFS policy that, in most cases, small take authorizations are unnecessary solely for transiting vessels, such as those described in BPXA's application and those providing transportation and supplies to NSB communities, unless the vessel activity has some potential to result in a significant biological response in the marine mammal(s) or affects the subsistence needs of Alaskan communities (*e.g.*, conducting, or in support of seismic, and possibly ice-breaking). In most cases, vessels are presumed not to alter marine mammal behavior sufficient to constitute a taking by harassment. Because barges are expected to travel in inshore waters, where bowheads are less likely to occur, and to travel between Northstar, West Dock, and Barrow and, therefore, have, at most, minimal impact on subsistence whaling by Nuiqsut, and because there is no information that these vessels will have an adverse impact on bowhead whaling at Barrow, NMFS has determined that, based on the record, there will not be an unmitigable adverse impact on bowhead whaling from vessel movement in support of Northstar. If the AEWC determines otherwise, NMFS believes they will make vessel movement a subject of discussion for the Conflict and Avoidance Agreement (C&AA). Under that agreement, BPXA will either agree to cease all vessel traffic between the beginning and end of the fall bowhead subsistence harvest, or limiting vessel traffic during this time period in accordance with the C&AA.

While BPXA would be responsible for maintaining the ice-free channel in order to facilitate oil spill response, the U.S. Army Corps of Engineers (Corps) permit prohibits ice breaking until October 15, meaning that ice-breaking will not occur until after most, if not all of the bowhead migration and subsistence whaling have concluded for the year. Any ice-breaking occurring prior to the end of the bowhead subsistence harvest at Nuiqsut is not considered part of the request by BPXA and, therefore, cannot be authorized for a taking of marine mammals.

An estimate of incidental harassments by aircraft is not necessary because helicopters must remain at a minimum altitude of 1,000 ft (305 m), weather permitting (except when landing or taking off). NMFS understands that other permits require helicopters at Northstar to maintain an altitude of 1,500 ft (457 m). At 1,000–ft altitude and higher, takings of marine mammals are unlikely to occur. At altitudes lower than 1,000 ft (305 m), while seals may make minor behavioral changes to the helicopter noise, these changes are unlikely to alter seal behavior sufficient to constitute a take. Further reducing potential impacts, helicopter traffic will be between shore and Northstar and bowhead and beluga whales are normally found in waters north of Northstar, outside the area of helicopter traffic.

NMFS recognizes however, that helicopter traffic patterns may change in the future when, and if, additional oil development structures are sited. NMFS intends to review the impacts from structure to structure flights when these activities apply for an initial LOA under these regulations. Applicants are encouraged to address this form of taking on marine mammals, especially bowhead whales and the subsistence hunting of this species, when applying for an LOA. Failure to adequately address this issue may result in a delay in processing applications.

MMPA Concerns

Comment 2: Greenpeace states that the artificial segmentation of industrial activities on the North Slope (*e.g.*, seismic, oil exploration, oil development) is not permitted under the MMPA. Later Greenpeace notes that the proposed actions artificially segment the environmental review of Northstar and its impacts, thereby violating the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). As a result, Greenpeace requests that its March 10, 1999, comments on the Final Environmental Impact Statement (FEIS) for Northstar, be incorporated by reference.

Response: When Congress implemented the 1981 Amendments to the MMPA, which authorized the Secretary to allow specified activities to obtain an exemption from the MMPA's moratorium on taking without a requirement to waive the moratorium under section 101(a) of the MMPA, it

put certain provisions on when and where the Secretary may grant those exemptions. One requirement was for the activity to be as specific as possible. Congress stated: "It is the intention of the Committee that both the specified activity and the specified region referred to in section 101(a)(5) be narrowly identified so that the anticipated effects will be substantially similar. Thus, for example, it would not be appropriate for the Secretary to specify an activity as broad and diverse as outer continental shelf oil and gas development. Rather, the particular elements of that activity should be separately specified, as, for example, seismic exploration, or core drilling." (H.R. Rep. No. 97–228 at p. 19, 1981). To the extent practicable, NMFS follows this guidance when promulgating regulations under section 101(a)(5) of the MMPA. As discussed throughout this document, NMFS does not believe that its action is in violation of either NEPA or the ESA.

The Corps' draft environmental impact statement (DEIS), FEIS, and the comments that were submitted to the Corps on those documents are considered to be part of NMFS' Record of Decision on this matter.

Comment 3: Greenpeace states that the proposed regulations fail to consider reasonably foreseeable exploration and development activities in the Beaufort Sea on the part of companies other than BPXA. The NSB expressed similar concerns regarding BPXA's application.

Response: NMFS has designed these regulations so that as new oil development units are constructed in the Beaufort Sea, and companies apply for a LOA for the taking of marine mammals, NMFS will need to make a finding that the "total taking by the activity" will have no more than a negligible impact on marine mammals and not have an unmitigable adverse impact on subsistence uses of these mammals. NMFS is not required to make these findings beforehand, when future activities remain speculative and impacts on marine mammals have not been fully assessed under NEPA.

NMFS believes that the Corps' FEIS addresses, to the extent possible, the cumulative impacts of past and future impacts on marine mammals and subsistence whaling (see Chapt. 10 of the FEIS). That document notes that "[T]he potential for future developments to cause or contribute to any deflection of the [bowhead] migration or impact the harvest will depend largely upon the proposed location with respect to the traditional migratory path and traditional harvest areas. Accordingly, proposed future projects will have to be analyzed on a case-by-case basis to determine whether and how they may cause or contribute to any effects on the bowhead migration or subsistence harvest."

Application Concerns

Comment 4: The NSB encourages NMFS to require BPXA to submit a modified petition which contains the level of detail and an organization which will allow for a meaningful review of the potential impacts of proposed Northstar development.

Response: NMFS does not agree that NMFS should reject BPXA's application. On March 1, 1999, NMFS provided duplicate sets of NMFS' ANPR, including BPXA's application, on this action to the NSB. ANPRs are provided in order for the public to provide comments on the adequacy of an applicant's application for an incidental take and on the applicant's activity. The NSB did not provide NMFS with comments during that 30-day public comment period. In addition, as discussed within this document, NMFS believes the NSB does not provide sufficient justification for NMFS to determine that the application did not meet the requirements in § 216.104.

Comment 5: The NSB notes that the application has more the appearance of a summary document than a completed document and is lacking in sufficient detail to allow for a meaningful assessment of whether the proposed activities meet the standards that will permit NMFS to issue the requested LOA.

Response: The MMPA requires NMFS to make its findings based on the best scientific evidence available that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks intended for subsistence purposes. NMFS is not restricted to the information provided by an applicant when making its findings, recognizing that some biases may be provided in an application. In those cases where the applicant provides the majority of the information for NMFS' findings, and supplementary documentation (*e.g.*, a DEIS or FEIS) is lacking, NMFS holds applicants to a higher standard for determining what is an acceptable application. However, in those cases where supplementary information is available, especially when that information is provided independent of the applicant, NMFS believes that an application need not provide extensive detail that can easily be found elsewhere. In this case, the supplementary information was provided by the Corps in its DEIS and FEIS on this action. The difficulty for the applicant in this action was that it did not have access to the material and analyses provided in the DEIS prior to its release. In addition, as is their right, BPXA is not required to totally agree with the findings in the DEIS/FEIS. As a result, there may be certain distinctions between information contained in the application and that in the DEIS/FEIS. It is the responsibility of NMFS to determine which document, if either, is correct.

Proposed Rule Concerns

Comment 6: BPXA believes the proposed regulations are confusing regarding which portions of the rule address applications or petitions for rulemaking and which portions of the rule address applications for LOAs. BPXA recommends using specific terms consistently to contrast the two steps required to authorize the activity. BPXA suggests utilizing a petition for regulations, and a request for an LOA.

Response: These regulations do not distinguish between applications for LOAs and petitions for rulemaking. While an application for an LOA requires rulemaking, it is a single-step process under these regulations. NMFS believes the commenter has confused these regulations with those in subpart I, which distinguishes between petitions for regulations, applications for LOAs and applications for Incidental Harassment Authorizations (IHAs). Because subpart I is not being amended at this time, BPXA's recommendation cannot be accepted. It should be understood however, that NMFS does not intend to require a dual process for issuing future initial LOAs, that is, rulemaking followed by review of an application for an LOA. NMFS intends the two processes to proceed at the same time.

Comment 7: BPXA presumes that the term "platform" in the rulemaking title includes drilling islands. The proposed activity does not involve an offshore oil rig platform but rather a permanent man-made gravel island.

Response: To avoid confusion, NMFS has replaced the term "platforms" with "facilities" to better describe the various types of oil and gas development activities that can obtain a small take authorization under this rulemaking.

Comment 8: BPXA notes that the term "Northstar Oil and Gas Development Unit on Seal Island," found in § 216.200(a), appears to limit the authorization for taking to the island and not include related activities such

as the pipelines. BPXA recommends dropping the words "Unit on Seal Island" from that paragraph.

Response: NMFS agrees and has made the change.

Comment 9: BPXA pointed out that NMFS regulations at § 216.104(a)(12) regarding a Plan of Cooperation (POC) differ from those in these regulations (§ 216.205).

Response: In response to NMFS' proposed regulations (see 60 FR 28379, May 31, 1995) one commenter noted that not all activities required submission of formal POC. As a result, NMFS modified the interim rule (see 61 FR 15884, April 10, 1996) from that originally proposed. However, while in this rulemaking, a POC is viewed as essential, there is no requirement that it be a formal document, separate from the LOA application.

Comment 10: BPXA noted that a POC is different from the C&AA.

Response: NMFS agrees. A POC is a set of information provided to NMFS at the time an applicant requests an LOA for activities in the Arctic. The C&AA is a formal agreement between the activity's participants and the AEWC. NMFS does not play a role in its development or implementation. As a courtesy, NMFS often receives a copy of the C&AA after it is signed.

Comment 11: BPXA recommends that NMFS consider including in the rule a time period by which NMFS must respond to an LOA request with either approval or denial. The applicant should be advised of a decision within a specified time period to avoid ongoing expectations of an LOA being granted or missing an entire season because NMFS approval or denial is not under any time limit.

Response: While NMFS understands the concern, rulemakings cannot be held to specific timelines which may preclude adequate public review and/or limit the decision-making process. Because rulemakings normally will take 8–12 months for completion, NMFS recommends applicants submit complete applications as close as possible to the time that the principal Federal agency releases its NEPA document for public review and comment.

Comment 12: BPXA notes that it submitted its request for an LOA on November 30, 1998, and that this submission fulfills the requirement under § 216.207(d).

Response: NMFS concurs. BPXA submitted its application for an LOA under § 216.104 on November 30, 1998, and a 30-day public comment period commenced on March 1, 1999 (64 FR 9965). Based in part on the comments received by NMFS and delays in both BPXA's construction schedule and NMFS' processing the application, BPXA submitted a revised LOA application on October 1, 1999 (received on October 15, 1999). A 60-day comment period on the revised LOA application began on October 22, 1999 (64 FR 57010). Those review periods satisfy the requirement of § 216.207(d).

LOA Concerns

Comment 13: The AEWC recommends that NMFS provide a minimum of 90 days for public review and comment on any new LOA request for arctic offshore production-related activities.

Response: NMFS believes that a 90-day public comment period is excessive and unnecessary given that new LOAs under these regulations will have several comment periods. First, either the Minerals Management Service or the Corps will provide for review and comment on a document under NEPA, presumably a DEIS, on any oil development in the Beaufort Sea. Such comment periods are a minimum of 45 days, and likely 60 days or longer. Second, NMFS will announce the availability of an application for a small take authorization incidental to the offshore production unit and will offer the public a minimum of 30 days for review of the application. Finally, if NMFS proposes regulations to govern the incidental taking, the public will be offered another comment period of 45–60 days, as was done for the Northstar authorization. Because NMFS' two review periods provide the public with a total of 75 to 90 days, subsequent to, or in conjunction with, the review period for the oil production project itself under NEPA, NMFS does not believe the additional time period is warranted.

It should be recognized however, that NMFS has already published and provided for public comment on BPXA's application for the Liberty oil development project (64 FR 9965, March 1, 1999). Because of a delay in timing for the start of the Liberty project due to NEPA, NMFS expects that BPXA will submit a revised application for Liberty. Because NMFS has already provided public notice on BPXA's application for a small take for the Liberty project, NMFS will not reannounce receipt of the application, but will proceed immediately to the proposed rule stage. As a result, and for this application only, NMFS expects to provide an extended public comment period of 90 days to allow the public adequate time for review both the application and the proposed rule, in lieu of providing another review limited to BPXA's Liberty application.

Comment 14: BPXA believes that a public comment period should not be required for renewal of LOAs under § 216.209(a)(2) only during the petition for regulations. If the activity applied for does not fall within the scope of the existing regulations, then the petition process for new or revised regulations should be followed which includes a public comment period. Having concerns about the adequacy of section 101(a)(5)(A) of the MMPA to provide mitigation measures from the potential adverse impact from oil production, the AEWC and the NSB recommend that NMFS issue an LOA that is either only for construction at Northstar, or is limited to only one year, in order to provide an opportunity to discuss mitigation measures and other protections for oil production activities. In addition, the AEWC requests that the public be granted a minimum of 30 days to review a renewal of an LOA.

Response: NMFS has reviewed the LOA reissuance concerns and notes that it has 3 options: (1) Reissue an LOA annually based upon timely receipt of reports without public comment prior to reissuance, (2) reissue an LOA annually based upon timely reports after a public comment period, or (3) issue an LOA for all or a portion of the 5-year period of validity of the regulations. Because under implementing interim regulations (see § 216.106(e)), NMFS would be required to provide a 30-day public comment period (except in cases where there is a significant risk to impacted marine mammals) prior to withdrawal, or even temporary suspension of, an LOA, for failure to meet any of the requirements of the regulations or the LOA, issuing LOAs for periods greater than one year is generally not acceptable to NMFS. Whether an opportunity for public comment is provided depends entirely on whether NMFS determines that all substantive issues have been addressed satisfactorily during rulemaking. If so, then little would be accomplished by annually revisiting these issues.

In this action however, several issues remain unresolved, the principal ones being the implementation of effective marine mammal mitigation and monitoring during oil production, the peer review of monitoring plans, and the submission of annual POCs. Therefore, NMFS has determined that LOA renewals under this rulemaking will have a requirement for a 30-day public review period, at least in the early years of renewal. However, in order to expedite the LOA renewal process, NMFS will open the review

process to the following issues only: (1) New citable scientific data or information (including Traditional Knowledge) that indicates that the determinations made in this document are in need of reconsideration, (2) comments on the POC, and (3) comments on a proposed monitoring plan. NMFS will give full consideration to all comments submitted within the authorized comment period when making its determination on reissuance. In addition, because of the requirement to submit timely reports with an LOA renewal application, it is expected that there will be only a limited amount of time between the date a request for an LOA renewal is submitted, and the date of expiration of the current LOA. As a result, NMFS will act on a request for an LOA renewal in a timely manner, but is unlikely to extend the public comment period beyond 30 days, unless there are compelling circumstances. In addition, these regulations allow NMFS to waive the public comment period once either multi-year mitigation (including POCs) and monitoring plans have been submitted to NMFS and reviewed by the peer review process described in the LOA and NMFS determines that no significant issues remain substantially unresolved.

Since construction work at Northstar will continue through at least November, 2000, issuance of an LOA limited only to construction has been accepted by NMFS. In the meantime, discussion on appropriate mitigation and monitoring during production can continue. However, to ensure that takings resulting from uncompleted construction work late in 2000 or early 2001, if any, are covered, NMFS has made the LOA valid for a full 12 months, but only for construction.

Comment 15: BPXA suggests that NMFS clarify that § 216.210(a) is intended to apply to the case of a proposed withdrawal of the LOA by NMFS, not by the applicant.

Response: NMFS agrees and has amended § 216.210(a) as recommended.

Take Level Concerns

Comment 16: Greenpeace states that NMFS accepts the applicant's assertion, with no scientific or other basis, that the number of takes of whales during operation and during construction of Northstar will be identical. There is no estimate of take or possible jeopardy from a variety of oil spill scenarios * * * and from the resultant cleanup activities. The NSB believes that it is unacceptable for the petition not to provide any estimate of the potential number of individuals of any subject species which could potentially be taken in the event of an oil spill associated with Northstar.

Response: While not identical, the estimated take levels by incidental harassment are similar. Calculations for incidental take levels by both construction and production are described in detail in the original and revised BPXA applications. NMFS believes that these calculations are based upon the best scientific information available. As a result, NMFS has accepted these take estimates. However, NMFS recognizes that, for reasons explained later in this document, these estimates do not include takes by harassment, injury, or mortality incidental to oil spills.

Comment 17: BPXA noted that the estimated levels of take provided in the preamble to the proposed rule were not updated based upon estimates provided in the September 30, 1999, revised application.

Response: Unfortunately, updates could not be made to the preamble to the proposed rule because the revised application was not received in time to revise the proposed rulemaking without further delaying the release of the proposed rule. However, NMFS has made the appropriate corrections in this document.

Negligible Impact Concerns

Comment 18: The MMC notes that (1) the path of the fall bowhead migration varies substantially from year to year; (2) that in most years comparatively few bowhead whales are likely to pass within 10 km (6.2 mi) of the Northstar site; and, (3) that any changes in swimming speed, direction, or other behavior caused by Northstar activities are unlikely to affect the size or productivity of the bowhead population (or of bowheads to Alaska natives for subsistence purposes). Because the available data are insufficient to be confident that both the population level effects (and the impacts on Native subsistence hunting) would be negligible, the MMC believes it would be more appropriate to base the assessment of possible impacts on the worst case scenario, and considering possible cumulative impacts over the full 15–20 years that production is expected at the Northstar site, rather than basing the assessment on the best available estimate of the average take level over the next 5 years.

Response: NMFS does not agree that it should make an assessment of take levels over the 15–20 year lifetime of the Northstar Unit. Under the MMPA, NMFS must make a determination that the "total of such taking during each 5-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence purposes * * *."

Also, NMFS does not consider it necessary to make a negligible impact determination on the worst-case scenario. NMFS believes that using the worst case estimate does not provide a realistic estimate of harassment take levels. NMFS suggests that reviewers note the detailed explanation in the application on how BPXA estimated take levels. The best scientific data indicates that, between 1979 and 1997, a period of 18 years of data collection, bowheads came within 10 km (6.2 mi) of the site of the future Northstar Unit only during 1997 (BPXA, 1999). This being the case, there is simply no need to presume that this migratory deflection would occur during each of the next 5 years. However, NMFS has determined that, because this close-approach did occur in a recent year, a more reliable estimate of take can be made by presuming that this take level could occur again once or twice within the next 5 year period. Therefore, NMFS has determined that an average annual take by harassment, due to noise from construction and operation at Northstar, as calculated by BPXA (i.e., 173 (maximum 1,533) per year) would result in a maximum of 717 bowheads annually or approximately 9 percent of the revised 1993 estimated population size of 8,200 (95 percent CI, 7,200–9,400) (Hill and DeMaster, 1999, IWC, 1996). NMFS notes that this harassment will be limited to a deflection in migration and would be considered a taking by Level B harassment. Such a taking would result in only small numbers being taken and having no more than a negligible impact (both as defined in § 216.103) on bowhead whales.

Finally, NMFS disagrees with the MMC that the available data are insufficient to be confident that both the population level effects (and the impacts on Native subsistence hunting) would be negligible. The take levels under discussion here are limited to harassment due to noise disturbance by construction and later production at the Northstar Unit. The level of noise produced at Northstar is expected to be substantially less than that produced during seismic surveys, and, unlike seismic, Northstar is stationary and located well inshore of the normal migratory path of the bowhead whale. In addition. the bowhead whale population has increased from approximately 4,400 (CV 3,500 to 5,300) (Zeh *et al.*, 1993) in 1978 to

approximately 8,200 in 1993 (Hill and DeMaster, 1999). A population increase of approximately 3.1 percent annually (Raftery *et al.* 1995, NMFS, 1999), coincident with oil exploration and development activity (including seismic), provides evidence that takings due to harassment by noise at Northstar will not have more than a negligible impact on bowhead whales.

However, of more concern to NMFS is the impact, not by Northstar alone, but the cumulative impact in the future by several offshore oil developments and seismic activity on the subsistence lifestyle of the North Slope residents. This is discussed in more detail later in this document.

Comment 19: Greenpeace notes that NMFS fails (1) to adequately consider the impact if the maximum number of bowhead whale takes (1,533 per year for the 5-year period or a total of 7,665 bowheads actually occurs, and (2) to justify its conclusion that the takings at this level would not be expected every year or would not jeopardize the species.

Response: Please refer to the response to previous comment. As noted in the application and in the preamble to the proposed rule, the taking of up to 173 (maximum 1,533/year) is limited to harassment, meaning the taking is for the short-term incidental harassment by noise disturbance, resulting in a short-term behavior change, such as a slight deflection of its westward migration route.

While NMFS recognizes that there is some potential that bowheads (and other marine mammal species) may be harassed, injured or killed due to an oil spill from Northstar, NMFS determined previously, under section 7 of the ESA, that oil and gas development at Northstar would not jeopardize the continued existence of the bowhead whale.

Comment 20: The NSB questions the citation in BPXA's application (i.e., NMFS, 1997), whether NMFS subscribes to the policy regarding a determination of negligible impact where the impact may be more than negligible, but the likelihood of occurrence is minimal, and whether NMFS will continue this policy in regard to future proposed OCS development projects.

Response: The reference cited in the BPXA application is NMFS' **Federal Register** notice of issuance of an IHA to the ARCO Oil Company for oil exploration in Camden Bay, Alaska (see 62 FR 51637, October 2, 1997). In that document, NMFS stated that when making a negligible impact determination, NMFS can find that a negligible impact determination may be appropriate if the probability of occurrence is low, but the potential effects may be significant. This statement has been made by NMFS previously (see 53 FR 8474, March 15, 1988) and can also be found in NMFS' Programmatic EA (NMFS, 1995) for implementation of regulations found at subpart I of this part. In stating this policy for this and other activities, NMFS is following Congressional direction to balance the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts states: "If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information." (132 Cong. Rec. S 16305 (Oct. 15, 1986)).

Comment 21: Greenpeace notes that the available information shows that if there is a major oil spill, the impacts would be severe, and, therefore, NMFS cannot find negligible impact. The risk of a long-term chronic leak, a large spill of 1,000 barrels or more, drill rig blowout and other occurrences exists. Because these events are still possible, BPXA must analyze and incorporate the marine mammal take that would occur.

Response: Keeping in mind the response to the previous comment, NMFS notes that, while a large oil spill, if it occurred, has the potential to have impacts on bowhead whales and other marine mammal species that are more than negligible, the possibility for a large oil spill to occur is believed by NMFS to be minimal. The Corps' FEIS describes in detail calculations it made for the probability for a major oil spill occurring at Northstar. According to that document there is a 1.6–5-percent chance of a major oil spill occurring along the offshore portion of the pipeline over the first 15 years of operation and a 7-percent chance that there would be a major spill due to platform operations over the life of the platform. NMFS accepts these estimates as the best information available.

Additionally, spilled oil would need to occur at a time and/or location where it could intercept bowhead whales or other marine mammal species. The FEIS describes the fate and consequences of having a major oil spill during different seasons of the year. NMFS also considers this information to be the best scientific information available. As a result, NMFS believes that, because the likelihood of a major oil spill occurring and impacting marine mammals is low for the period of these regulations, it is both impractical and speculative to calculate take levels for major oil spills. The low probability of a major oil spill impacting marine mammals also allows NMFS to make a determination that the taking would have no more than a negligible impact on marine mammals in accordance with Congressional direction mentioned previously.

However, NMFS recognizes that in the unlikely event that a major oil spill did occur, the impact has some potential to be more than negligible. As a result, NMFS has determined that, in the event a major oil spill occurs, NMFS will need to reassess immediately its determination in this document that the taking of marine mammals by oil and gas development activities in the Beaufort Sea is having no more than a negligible impact on marine mammals. If, because the takings are projected to exceed the levels used in this document to make a negligible impact finding, NMFS can no longer make a negligible impact determination, NMFS will immediately suspend the LOA issued for the oil development project causing the impact. Because the LOA suspension falls under the emergency determination for LOA suspension under these regulations, NMFS will not provide a 30-day public review period prior to suspension. However, NMFS believes the possibility of this situation occurring is remote.

Comment 22: Greenpeace states that the NMFS assertion of negligible impact on endangered species or stock, despite the fact that no specific prediction will be made about the potential number of bowhead whales that would be taken as a result of an oil spill and cleanup, is arbitrary and capricious, and fails to utilize the best scientific and commercial data available. The conclusion of negligible impact is not supported by any assertion of fact.

Response: Please see the response to the previous two comments. The FEIS discusses the potential for a large oil spill, either through a break in the pipeline or a blowout. As mentioned previously, NMFS adopts this documentation as the best scientific information available. In addition, mitigation measures in place at Northstar, including weekly inspection

overflights of the pipeline (in addition to possibly more frequent flights transporting people and supplies), and incorporation of the LEO spill detection system reduce the potential for chronic leaks to go undetected for long periods of time.

Comment 23: Greenpeace contends that NMFS only cursorily addresses impacts from oil spills and cleanup and fails to analyze the cumulative exposures or the risk to the entire bowhead population from a prolonged disruption of a biologically important behavior or from injury or take over the life of the Northstar project, or due to a catastrophic oil spill.

Response: The MMPA requires NMFS to make a determination that the total of such taking during each 5-year (or less) period concerned will have a negligible impact on the species or stock of marine mammal, not whether the takings will be negligible over the entire 20–30 year lifespan of Northstar. Also, it is not necessary for NMFS to fully describe the impacts and the determinations made in that regard in the preamble to a proposed rule. The concerns raised by Greenpeace were fully addressed by the Corps in its FEIS. Based upon that document, NMFS believes the taking will have no more than a negligible impact (as defined in § 216.103).

Comment 24: Greenpeace states that oil spill trajectory modeling has not been done to support the conclusion of negligible impact, or the conclusion that the impact will be limited because the trajectory will be confined to the shoreline. Also, Greenpeace states that there is no consideration being given of the persistence of oil in the environment when considering level or numbers of take. The toxicity of oil can persist in the environment for more than ten years.

Response: As mentioned previously, NMFS believes that the potential for a large oil spill occurring during the 5-year period of these regulations is remote. Therefore, NMFS believes that the recommended studies or considerations are unnecessary for it to make its negligible impact determination.

Comment 25: Greenpeace states that NMFS has provided no legal justification for authorizing incidental take nor has it utilized the best scientific and commercial data available for any of its conclusions. In the draft regulations, NMFS ignored important scientific information indicating greater oil spill and noise impacts and failed to acknowledge deficiencies in many of the studies BPXA relied on in its application, as noted by Albert (1996, 1997).

Response: NMFS uses the best scientific and commercial information available when making determinations of negligible impact on marine mammal species and no unmitigable adverse impact on species/stocks for subsistence purposes. NMFS believes that this information is contained in the BPXA application, NMFS' biological opinion and the Corps FEIS on Northstar provides this information. Without Greenpeace providing a reference for Albert (1996, 1997) NMFS is unable to respond further to the statement.

Subsistence Concerns

Comment 26: The AEWC notes that the BPXA application estimates the distances from the Northstar Unit to the traditional hunting areas for 3 fall bowhead whale subsistence villages. However, because the bowhead whale moves in a single westward migration, this information is of limited relevance to NMFS' evaluation of potential adverse impacts on subsistence. Adverse impacts to bowhead whales could affect the subsistence hunting of any or all 10 of the villages depending upon the severity and timing of any oil spill and the perceptions by the various villages on how the oil affected the quality of the subsistence product.

Response: While the bowhead whale moves in a single westward migration in the fall, except for the unlikely occurrence of a significant oil spill (greater than 1,000 barrels), wherein all 10 villages' bowhead subsistence harvest may be affected, NMFS believes that the impact on bowhead whales from Northstar will be limited to 3 villages, and in particular Nuiqsut. Nuiqsut has the greatest potential to be impacted by development at Northstar, as its whaling customarily takes place in the vicinity of the island.

In the past, NMFS has requested, without success, information regarding the locations where successful bowhead whale takes occur in the Beaufort Sea. Considering that whalers are provided with GPS receivers, this information should be available. This information could provide scientists with data to make assessments on the impacts from oil and gas production activities on Beaufort Sea subsistence whaling. In the interim, NMFS uses the more general information provided by the applicant.

Based on the information to date, however, NMFS has determined that the potential for a major oil spill to occur, and for that oil to intercept bowhead whales in the migratory corridor, which in turn, could affect the subsistence harvest of all 10 villages, is unlikely.

Comment 27: The NSB notes that one of their primary concerns is the potential for planned (oil development) activities to disrupt fall subsistence whaling by the village of Nuiqsut. NSB believes it is difficult to clearly identify all of the activities associated with construction and operations which are expected to occur during this critical period.

Response: Activities that have some potential to occur during the same period as Nuiqsut subsistence whaling would include any activities scheduled, but not completed, prior to September. These are described in BPXA's application. However, activities that may occur during that time period may be influenced by agreements made during the C&AA negotiations. Based upon previous C&AAs, and recent statements made by BPXA at a stakeholders meeting in Seattle, NMFS presumes that any activity that creates noise, or has the potential to disturb bowheads, either acoustically or visually, either will not take place or will be modified during the fall subsistence hunt for bowheads. However, even without an agreement to curtail activities during this period, NMFS does not believe these activities will create sufficient level of noise to result in an unmitigable adverse affect on subsistence uses of the bowhead.

Comment 28: The AEWC notes that the annual C&AA is not entered into between BPXA and NSB residents, but by the AEWC on behalf of its bowhead whale subsistence hunters.

Response: NMFS concurs and has made the correction in this document.

Mitigation Concerns

Comment 29: The AEWC recommends that NMFS take this opportunity to convene a meeting, or a series of meetings, with the AEWC and other interested parties to (1) address arctic offshore oil production-related impacts to marine mammals and subsistence hunting, and (2) discuss appropriate additional mitigation measures during Northstar oil production.

Response: NMFS concurs that a meeting, or a series of meetings, to address mitigation measures that might be adopted by the industry in the event that an oil spill occurs is warranted. In that regard, NMFS hosted a meeting on February 24, 2000, between the AEWC/NSB and the oil industry to start a dialogue to identify monitoring measures for both noise and oil that might be initiated to address both short- and long-term, cumulative impacts. Future meetings are also planned. However, these meetings should not be confused with the peer-review meetings normally held in late spring for the open

water noise monitoring and early fall for on-ice noise monitoring in Seattle, WA.

Comment 30: Greenpeace notes that during the ice covered season, BPXA proposes no mitigation before mid-March, based on the assumption that female ringed seals establish their birth lairs before pupping in late March or April. Noting that ringed seals begin to build lairs as soon as the ice is covered with snow, BPXA must mitigate harassment of ringed seals prior to initiation of any construction activities, regardless of when they commence.

Response: The primary ice roads used during Northstar construction (and later during oil production), must be almost straight-line in order to effectively transport gravel from the mine site to Seal Island and for construction of the pipeline. Once Northstar and the pipeline are constructed, only a single primary offshore road will need to be constructed annually, that one along the pipeline corridor. As a result, there is little mitigation that has been identified that would be practical and effective during the construction of these primary roads in the early part of the winter season. However, secondary ice roads constructed later in the season, are not believed to be confined to a set track and can be constructed to avoid seal structures. As a result, NMFS has imposed mitigation measures in the LOA which requires (1) Using trained dogs to locate seal structures on all ice roads, (2) avoiding seal structures by a minimum of 150 m (492 ft) during construction of any roads other than the gravel and pipeline primary roads, and (3) avoiding, to the greatest extent practicable, disturbance of any located seal structure after March 20.

It should be recognized that mitigation (using trained dogs) conducted this year during primary ice road construction was implemented because BPXA did not have an authorization for harassment under the MMPA, and therefore needed to avoid, to the greatest extent possible, harassing ringed seals. At a workshop later this year, NMFS will assess the value and practicality of using trained dogs as a mitigation measure to locate seal structures on the ice and then halting activity around the structure until either the animal voluntarily vacates the structure or biological observers determine that the structure is unoccupied. Alternatively, NMFS may determine that it is preferable for the ringed seals to be discouraged, by incidental construction noise, from converting breathing holes into seal structures where pups may later be born, and potentially injured or killed at some later time.

Section 101(a)(5)(A)(ii)(I) of the MMPA provides for regulations setting for the permissible methods of taking and other means effecting the least practicable adverse impact on the affected species or stock and its habitat. As ringed seals construct several breathing holes and lairs within its territory, they do not rely on a single structure during the year. Ice roads constructed early in the year will result in some minor harassment as ringed seals abandon certain breathing holes, if the noise is disturbing to them. NMFS believes this may be preferable to avoiding all harassment of ringed seals during ice road construction (how that would be accomplished has not been identified) and then having the newborn pup, who may be more sensitive to noise than an adult, abandon a birthing lair prior weaning, and having that pup succumb to the effects.

Comment 31: Greenpeace notes that BPXA is proposing to have marine mammal monitors conduct watches commencing 30 minutes prior to such noisy activities as impact hammering and offloading during the open water season. Greenpeace states that given frequent and often extended periods of impaired visibility in the Beaufort Sea due to fog and low, or no, light conditions, BPXA should include work restrictions during these times.

Response: NMFS does not agree. BPXA proposed having marine mammal monitors to conduct observations for 8 hours/day for 2–3 days during each major type of construction activity, and during quiet periods before and/or after these activities occur. Monitors must conduct observations a minimum of 30 minutes prior to starting noisier activities. If a marine mammal is observed within an area that might cause Level A harassment (180 dB for cetaceans, 190 dB for pinnipeds), work cannot start until the marine mammal has left the safety zone. NMFS has clarified this requirement in the LOA to require marine mammal monitor(s) be on watch during all daylight hours for any activity that results in a SPL of at least 180 dB at any distance which exceeds the island's land/water interface. This monitoring must begin in daylight at least 30 minutes prior to beginning the activity. Also, the entire safety zone must be visible during the entire pre-activity monitoring time period in order for the activity to begin. This means that noisy activities cannot start, or be restarted after a time period set in the LOA during low visibility and nighttime periods.

As an extra precaution, work is required to cease whenever a marine mammal enters its respective safety zone as noted by an observer. However, while certain work must not start-up until the observer can ensure that the safety zones are free of marine mammals, once that work begins it need not cease simply because weather precludes adequate observation during inclement weather or nighttime. NMFS presumes that anthropogenic noise in the area around Northstar will discourage marine mammal presence if the noise is bothersome to the animals.

Comment 32: Greenpeace was concerned that BPXA proposes to intentionally harass marine mammals as a form of mitigation in the event of an oil spill. Greenpeace believes that NMFS should not approve the intentional use of harassment to reduce the level of serious injury or mortality. Greenpeace notes that regardless of whether this technique constitutes acceptable mitigation (and Greenpeace asserts it does not), it is not practical given the persistence of oil in the environment. There is no information or reasoned analysis of how long intentional harassment will be used as a mitigation strategy during an oil spill and just how much reduction in Level A harassment will be achieved.

Response: The intentional harassment of marine mammals for the health and welfare of the animal is under another provision of the MMPA and not under this section. In the event that a significant oil spill occurred, NMFS and other agencies would determine how best to protect marine mammals from oil.

Comment 33: Greenpeace is concerned that BPXA cites its Oil Discharge Prevention and Contingency Plan (ODPCP) as a mitigation measure for protecting marine mammals. Mitigation should not be assumed until BPXA can reasonably prove its ability to respond and remove oil from the environment.

Response: While NMFS considers the ODPCP to be a mitigation measure to reduce impacts to marine mammals, NMFS also recognizes the inability to respond to an oil spill in the waters surrounding Northstar at certain times and in certain conditions. These constraints to respond in all seasons and weather conditions has been discussed in detail in Chapter 8 of the Corps FEIS.

Comment 34: The MMC recommends that NMFS review the ODPCP to assure that the risk of spills has been estimated appropriately; require modification of the contingency plan if everything feasible has not been done to minimize the risk of spills occurring and impacting marine mammals; and provide for periodic site inspections as part of the long-term monitoring

program to assure that the contingency plan can be implemented as and when necessary. Finally, the MMC recommends that an assessment of the contingency plan and any monitoring requirements be included in any **Federal Register** document published to promulgate final regulations on this action.

Response: NMFS believes that it has neither the expertise to determine the adequacy of the ODPCP, nor the authority under the MMPA to require the ODPCP be modified by BPXA or to place these requirements on Federal or state agencies with such authority. As the MMC noted in its comment, the ODPCP has been approved by the U.S. Department of Transportation, the U.S. Coast Guard, the Minerals Management Service (MMS), and the State of Alaska Department of Environmental Conservation. For its determinations of negligible impact, NMFS relies on the information, including estimates of risk from oil spills, contained in the FEIS.

Monitoring Concerns

Comment 35: The NSB believes that the proposed marine mammal monitoring plan in its present form is inadequate. The plan, and especially the proposal for passive acoustic monitoring of fall migrating bowhead whales, should be revised and made clearer.

Response: BPXA's technical plan for marine mammal and acoustic monitoring during construction of Northstar was submitted to NMFS in May, 1999, as a supplement to its November 1998, petition. That plan was reviewed at the peer review workshop held in Seattle, WA on July 1, 1999, and revised in August 1999, based on the recommendations made during the workshop. The NSB participated in that workshop. NMFS does not believe that it is necessary at this time to request BPXA to revise the plan prior to providing all parties at the workshop an opportunity to respond. Since this plan will be reviewed again later this year, the comments and recommendations made by the NSB will be placed on this year's meeting agenda.

Comment 36: Greenpeace notes that, although NMFS is proposing regulations governing the taking of marine mammals during the construction and operation of Northstar, the accompanying marine mammal monitoring program only applies to project construction. The monitoring program fails to outline a program for monitoring marine mammal takes during Northstar operation.

Response: BPXA's revised monitoring plan as submitted on September 1, 1999, provides detailed description of proposed monitoring during construction. This monitoring had been amended based on comments received during the Arctic Peer Review Workshop held in Seattle, WA on July 1, 1999.

A detailed description of monitoring during Northstar operations was not submitted at the time because that monitoring program would not begin until oil drilling operations began, approximately November 2000. BPXA will submit a monitoring plan for operations in sufficient time for that plan to be reviewed by peers and the general public. NMFS anticipates public review on the monitoring plan during the first year of operations will be conducted during the public comment period on an application for LOA renewal, which will be contingent on submission of an adequate monitoring plan. In the interim, BPXA will continue monitoring impacts as described in the August 20, 1999, Technical Monitoring Plan. As stated in BPXA's application, monitoring during operations will require evaluation based on the results of monitoring during construction and any other information that becomes available in the interim. NMFS intends to continue past practice and have annual submissions of proposed monitoring plans and to have those plans peer reviewed prior to implementation.

Comment 37: Greenpeace believes that specific monitoring requirements should be included in the regulations, not in the LOA.

Response: If specific monitoring conditions are contained in the regulations, modifications to the monitoring would require an amendment to the regulations prior to implementation. This would prevent prompt implementation of revised monitoring based on the annual review process, or in response to an unusual event, as can be done by having specific monitoring conditions contained in an LOA. As a result, NMFS has not adopted this recommendation. However, it should be noted that BPXA must comply with the conditions of the LOA, so it would be responsible for implementing any monitoring identified in the LOA.

Comment 38: Greenpeace states that NMFS cannot assume that the impacts of the Northstar operations on marine mammals will be negligible in the absence of a detailed monitoring program to back up that assertion.

Response: NMFS believes that the results from monitoring are useful to support or refute its determinations that takings are having a negligible impact on affected marine mammal stocks and not having an unmitigable adverse impact on subsistence uses of marine mammals. However, a detailed monitoring program is not a requirement under the MMPA before NMFS can make these determinations; the MMPA requires only that a monitoring program be required under regulations authorizing the taking. For Northstar, NMFS expects that, through the peer review process, a comprehensive monitoring program will be implemented that will provide the necessary information on impacts on marine mammals.

Comment 39: Greenpeace states that BPXA's proposed plan to establish a peer review process as outlined in its monitoring plan is not sufficiently independent to meet the standards of the MMPA. The regulations should require BPXA to submit the monitoring plans well in advance so that NMFS can instigate its own independent peer review, and require that its recommendations be incorporated into the final plans.

Response: The peer review process described in BPXA's Technical Plan for Marine Mammal and Acoustic Monitoring During Construction of BP's Northstar Oil Development in the Alaskan Beaufort Sea, 2000, is the same as NMFS' Arctic Peer Review Workshop held annually in Seattle, WA. Participants in this workshop, and similar workshops held to discuss on-ice monitoring of seals, typically include representatives from industry, the NSB, the AEWC, universities, environmental organizations, and state and Federal government.

It should be understood that independent peer review in this context means a review by other than NMFS, the oil industry and its contractors, and the AEWC/NSB. However, independent peer review is not required for authorizations issued under section 101(a)(5)(A) of the MMPA. While peer review of monitoring plans has been incorporated into these regulations in accordance with findings made at a workshop held in Seattle in 1994 with the AEWC, the oil and gas industry and others, independent peer review is at the discretion of NMFS. On April 9, 1999 (64 FR 17347), NMFS requested nominations for the voluntary participation in the peer review process. Due to a lack of interest expressed by the public in response to this notice, NMFS has decided to reserve use of an independent peer review to matters of significant dispute between the AEWC, NMFS, and/or the Holder of an LOA. In general, specific requirements for independent peer review will be

determined in advance and noted in an LOA.

Comment 40: Both the MMC and BPXA note that the preamble to the proposed rule failed to mention the acoustic monitoring program for bowhead whales described in BPXA's revised application and monitoring plan.

Response: NMFS acknowledges the oversight. BPXA's technical plan for marine mammal and acoustic monitoring during construction at Northstar proposed seven monitoring tasks, not six. These tasks are listed elsewhere in this document.

Comment 41: The MMC recommends that NMFS review past aerial survey data to determine whether the surveys conducted by the MMS are likely to provide sufficient information to assess the utility of the proposed acoustic monitoring and if the MMS' surveys are judged unlikely to provide sufficient data, require that additional surveys be done during the construction phase to document the presumed effectiveness of the acoustic monitoring.

Response: Thank you for this recommendation. As noted in BPXA's application, use of an acoustical monitoring system is planned to be tested in 2000. The purpose of the system is, in part, to assess the feasibility of its use as an alternative to aerial surveys. In addition to MMS surveys, additional aerial surveys for bowheads are conducted in the region to assess impacts from seismic work. This data would also be available for analysis. As a result, the MMC's comments have been forwarded to NMFS scientists and others for consideration. However, NMFS recommends MMC scientists participate in the peer review workshops so that the concerns of the MMC can be addressed more directly.

Comment 42: The MMC, because of perceived uncertainties in the data regarding impacts to ringed seals and polar bears and interactions between these two species, recommends that monitoring of polar bears and polar bear den sites required by regulations and LOAs issued by the U.S. Fish and Wildlife Service (USFWS) will be coordinated with the ringed seal monitoring required by this set of regulations and LOAs.

Response: NMFS is unaware of any evidence that increased interactions between polar bears and ringed seals will occur as a result of construction of ice roads and the reconstruction of Seal Island. To the extent practicable, on-ice monitoring of ringed seals and polar bears has been, and will be, coordinated. NMFS notes that often the same biological observers conducting ringed seal observations are also conducting polar bear observations. In addition, the USFWS has attended on-ice peer review workshops wherein NMFS and others review previous monitoring and upcoming monitoring plans. The MMC concerns expressed here will be reviewed at the next meeting. NMFS recommends that, if the MMC has any suggestions regarding appropriate study designs to determine whether oil and gas activity results in increased interactions between polar bears and ringed seals, they should provide that information to NMFS prior to the next on-ice peer review meeting.

Comment 43: Greenpeace asserts that BPXA's monitoring program relies on ineffective methods for monitoring ringed seals.

Response: To the extent practicable, NMFS follows the guidelines in Swartz and Hofman (1991) when reviewing and making recommendations on monitoring oil and gas activities in Arctic waters. Based on that document, and the results of a workshop held in Seattle in October 1999, BPXA has implemented a monitoring program using dogs to locate ringed seal structures in the ice. However, NMFS notes that using dogs this winter, prior to issuance of an LOA, does not mean that dogs will be required each year that ice roads are constructed. That determination will be based in part on the recommendations of scientists and the value of the information provided by this method of data collection. Generally, in cases where ice roads are constructed early in the year, under an LOA or IHA to take marine mammals, NMFS has questioned the need for dogs to monitor harassment takings. However, in order to protect newborn pups, dogs will be required under an LOA, whenever new, secondary, ice roads are constructed after March 1.

Following Swartz and Hofman (1991), NMFS has determined that the Before-After Control-Impact (BACI) study of ringed seal distribution meets the monitoring requirements for assessing impacts on ringed seals during wintertime construction and operation. This does not mean however, that additional or alternative ringed seal monitoring will not be required in future years under an LOA. Such monitoring may be imposed as a result of future peer review workshops.

Reporting Concerns

Comment 44: The AEWC requests that, when scheduling review periods, NMFS give due consideration to the time of year when that period will occur. Spring bowhead whale subsistence hunting generally is most intense for our communities during April, May, and June. In addition, the annual meetings of the International Whaling Commission, usually are scheduled sometime between early May and mid-July. These meetings last a total of 4 weeks and require intense preparation.

Response: Considering that the fall bowhead whaling season begins around September 1 and continues for several weeks, wherein the AEWC is also not available for reviewing documents and meeting, there is limited time during the year for an annual review.

As proposed previously, an interim report was due 180 days prior to expiration of an LOA. If an LOA expires early in the year, as is expected with the Northstar LOA, then the report would be due 6 months prior to that date, or in late summer of the previous year. Because of the timing, this report obviously could not include an assessment of the activity's impact on bowhead whales and the subsistence harvest that year since the fall migration would only be starting at that time. Therefore, this report would need to contain an assessment of the previous year's impact on bowhead whales, requiring the use of dated information, and putting the data out of synchrony with the actual taking of marine mammals during that LOA period of validity. However, this is realistic considering that it takes 6–7 months to incorporate MMS aerial survey data on bowheads into an analysis of impacts from an oil and gas exploration or development activity.

As a result, because of the importance of having a peer review of both monitoring plans and the results from previous monitoring, NMFS has amended the regulations and is requiring holders of LOAs to provide two interim reports, the first due 90 days after the end of the on-ice season (approximately September 15th for the report), and the second due 90 days after the end of the fall bowhead migration in the Beaufort Sea (approximately February 1st for the report). NMFS will also require a draft comprehensive report by May 1st of the year following the year of validity of the LOA. NMFS recognizes that this means that the first year LOA for Northstar will only have a report on the on-ice monitoring due to NMFS by the time NMFS needs to consider a renewal of the first-year LOA.

Finally, NMFS will require a final comprehensive report on all marine mammal monitoring and research conducted by the holder of its LOAs during the period of these regulations

must be submitted at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations, if renewal of the regulations has not been requested.

Comment 45: The NSB believes that the proposed method for project review (two reviews/year, one through the mail) is not adequate. One meeting is needed to review the draft proposal and a second meeting is needed to review the draft report.

Response: NMFS disagrees that a meeting is necessary solely to review BPXA's draft monitoring report(s). For continuity, this report (which is a report on the results of previous years' monitoring programs), is usually reviewed and critiqued at the same time the NSB and others are recommending monitoring measures for the upcoming season. NMFS believes that discussion on the results of previous monitoring at the same time as discussion of the upcoming monitoring plan, facilitates recommendations on appropriate monitoring and/or research.

In addition, recognizing the period of time when NSB residents are not available to meet (discussed previously in this document) and because the NSB, NMFS, and others are already sponsoring and/or participating in three meetings annually on this issue, one for open water monitoring, a second for winter (on-ice) monitoring, and a third to address short- and long-term monitoring for effects from potential oil spills on marine mammals, a fourth meeting limited to discussion on the results of previous year's monitoring is simply not practical at this time.

ESA Concerns

Comment 46: Greenpeace contends that the proposed rule (64 FR 57010, October 22, 1999) violates section 7(a)(2) of the ESA because it fails to insure that actions to approve regulations are not likely to jeopardize the continued existence of endangered species, after required consultation and using the best scientific and commercial data available.

Response: With the issuance of a Biological Opinion (BO) on March 4, 1999, NMFS completed formal consultation with the Corps under section 7 of the ESA for the construction and operation of the Northstar project. The BO, which found that the construction and operation of the Northstar project activity will not jeopardize the continued existence of any species under the jurisdiction of NMFS, was based upon the best scientific and commercial data available. Because issuance of these regulations and an LOA to BPXA for the incidental take of bowhead whales is also considered a Federal action, NMFS has conducted a consultation under section 7 with itself on this action. The finding by NMFS is that an authorization for the taking of bowhead whales incidental to construction and production of the Northstar Unit, under section 101(a)(5)(A) of the MMPA, while it may adversely affect bowhead whales, is not likely to jeopardize its continued existence. If new information is obtained which affect bowhead whales in a manner or to an extent not previously considered, or if the level of incidental take is exceeded, reinitiation of consultation will be undertaken.

Comment 47: Greenpeace also contends that, by proposing the regulation, NMFS has made an irreversible and irretrievable commitment of resources with respect to the Northstar project, which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternative measures which would not violate section 7(a)(2) of the ESA.

Response: NMFS does not agree that it has made an irreversible and irretrievable commitment of resources in conjunction with proposing regulations for the project. NMFS completed its section 7 responsibilities prior to issuance of this final rule.

Comment 48: Greenpeace believes that the proposed rule (64 FR 57010, October 22, 1999) fails to utilize its authorities in furtherance of the purposes of section 7(a)(1) of the ESA by carrying out programs for the conservation of endangered species.

Response: Conservation recommendations under section 7(a)(1) of the ESA were provided by NMFS to the Corps in the Northstar BO. These include: (1) Vessel operations should be scheduled to minimize operations after August 31 of each year in order to reduce potential harassment of migrating bowhead whales, (2) utilize agitation technique for placement of sheetpiling and piling instead of pile-driving whenever practicable, (3) develop and conduct an acoustic monitoring study during construction and initial operation, and (4) conduct or support studies to describe the impact of Northstar on the migrational path of bowhead whales in the Beaufort Sea.

Additional conservation recommendations to reduce impacts on the endangered bowhead whale are contained in these regulations, the BPXA LOA, and the Incidental Take Statement issued to the Corps under section 7(a)(2) of the ESA.

Comment 49: Greenpeace notes that the proposed rule (64 FR 57010, October 22, 1999) states that NMFS has begun consultation under section 7, but that there has been no public release of information concerning the scope of consultation nor of a biological assessment which adequately assess these impacts.

Response: While there is no requirement in the ESA for making that information public, this document notifies the public of the completion of section 7 consultation. Recognizing that impacts on listed species will result from the activity itself, not from the issuance of an authorization for the incidental taking, NMFS has determined that the issuance of 5-year regulations for the Northstar Project, and a 1-year LOA, may affect bowhead whales, the action was unlikely to jeopardize the stock's continued existence. Because Biological Assessments are written at the discretion of the action agency, and because a BO was written previously on the major action (i.e., on construction and operation of Northstar), a new Biological Assessment is not necessary for this action and, therefore, one was not prepared.

Comment 50: There was no incidental take statement in the Northstar BO.

Response: That is correct. Whenever a marine mammal species listed as endangered or threatened under the ESA is involved, section 7(b)(4)(C) of the ESA requires that the taking is also authorized pursuant to section 101(a)(5) of the MMPA. Until the requirements of both the MMPA and ESA are met, an incidental take statement cannot be issued. The issuance of an LOA to BPXA for Northstar will meet the MMPA requirements and an Incidental Take Statement can be, and will be, issued shortly.

Comment 51: Greenpeace states that the proposed rule results in a taking of a protected species in violation of section 9 of the ESA.

Response: The taking of endangered bowhead whales incidental to the construction and operation of the Northstar Unit is not expected to be in violation of section 9 of the ESA. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of, the agency action is not considered to be prohibited taking under the ESA provided that such taking is in compliance with the terms and condition of the Incidental Take Statement. As mentioned previously, the incidental taking of bowhead whales under the ESA will be authorized through an Incidental Take Statement issued under section 7 of the ESA.

Comment 52: The original Northstar BO did not address the quantitative

information submitted by BPXA in its incidental take publication regarding expected level of takes, such as 173–1,533 bowheads annually, or sources of impacts, such as 16,800 large-volume haul trips, 28,500 dump trucks, etc.

Response: The Biological Assessment was first submitted to NMFS by the Corps on May 19, 1998, with supplemental information provided on July 10, 1998. This was prior to BPXA submitting information for an IHA on August 12, 1998 (63 FR 57096, October 26, 1998), or on November 30, 1998, for this action. While NMFS could have included this additional information in its BO, this information was considered preliminary at the time and unnecessary for making a determination on whether or not the activity could jeopardize the bowhead whale's continued existence. Estimates of bowhead whale takes by harassment have been evaluated during this rulemaking and will be incorporated as appropriate into the Incidental Take Statement. NMFS notes however, that the activities mentioned by the commenter will occur during the winter and will not affect bowheads.

Comment 53: Greenpeace believes that NMFS has failed to conduct a North Slope-wide assessment of the impacts to bowhead whales from reasonably foreseeable exploration and development activities in the Beaufort Sea.

Response: NMFS' evaluation of the cumulative effects on bowhead whales, by Beaufort Sea activities, were addressed in part V. of the March 4, 1999, BO.

Description of Habitat and Marine Mammal Affected by the Activity

The DEIS and FEIS prepared for the Northstar development (Corps, 1998, 1999) contains a detailed description of the Beaufort Sea ecosystem and its associated marine mammals. Those documents are part of the record of decision of this rulemaking. A copy of the FEIS is available from the Corps upon request (see **ADDRESSES**).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga whales (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species and of others can be found in several documents (e.g., Hill and DeMaster, 1998) including the BPXA application (BPXA, 1999) and the previously mentioned FEIS. Please refer to those documents for specific information on these species. These documents are part of this rulemaking. In addition to the species mentioned in this paragraph, Pacific walrus (*Odobenus rosmarus*) and polar bears (*Urus maritimus*) also have the potential to be taken. Appropriate applications for taking these species under the MMPA have been submitted to the USFWS by BPXA.

Potential Effects on Marine Mammals

Noise Impacts

Sounds and non-acoustic stimuli will be generated during construction by vehicle traffic, ice-cutting, pipeline construction, offshore trenching, gravel dumping, sheet pile driving, and vessel and helicopter operations. Sounds and non-acoustic stimuli will be generated during oil production operations by generators, drilling, production machinery, gas flaring, camp operations and vessel and helicopter operations. The sounds generated from construction and production operations and associated transportation activities will be detectable underwater and/or in air some distance away from the area of the activity, depending upon the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor. At times, some of these sounds are likely to be strong enough to cause an avoidance or other behavioral disturbance reaction by small numbers of marine mammals or to cause masking of signals important to marine mammals. The type and significance of behavioral reaction is likely to depend on the species and season, and the behavior of the animal at the time of reception of the stimulus, as well as the distance and level of the sound relative to ambient conditions.

In winter and spring, on-ice travel and construction activities will displace some small numbers of ringed seals along the ice road and pipeline construction corridors. BPXA began winter construction activities in mid-December, 1999, well in advance of female ringed seals establishing birthing lairs beginning in the latter half of March. The noise and general human activity may displace female seals away from activity areas and could negatively affect the female and young, if the female remained in the vicinity of the ice road.

During the open-water season, all six species of whales and seals could potentially be exposed to vessel or construction noise and to other stimuli associated with the planned operations. Vessel traffic is known to cause avoidance reactions by whales at certain times (Richardson *et al.*, 1995). Pile driving, helicopter operations, and possibly other activities may also lead to disturbance of small numbers of seals or whales. In addition to disturbance, some limited masking of whale calls or other low-frequency sounds potentially relevant to bowhead whales could occur (Richardson *et al.*, 1995; BPXA, 1999).

A more detailed description of potential impacts from construction and operational activities on marine mammals can be found in BPXA's application (BPXA, 1999) and the Corps' FEIS (Corps, 1999). That information is accepted by NMFS as a summation of the best scientific information available on the impacts of noise on marine mammals in this area. Additional information used by NMFS in this determination can be found in Richardson *et al.* (1995) and the references provided in BPXA's application.

Oil Spill Impacts

For reasons stated in the application, BPXA believes that the effects of oil on seals and whales in the open waters of the Beaufort Sea are likely to be negligible, but there could be effects on whales in areas where both oil and the whales are at least partially confined in leads or at the ice edge. In the spring, bowhead and beluga whales migrate through offshore leads in the ice. However, given the probable alongshore trajectory of oil spilled from Northstar, in relation to the whale migration route through offshore waters, interactions between oil and whales are unlikely in the spring. In the summer, bowheads are normally found in Canadian waters, and beluga whales are found far offshore. As a result, at this time of the year, these species will be unaffected should a spill occur. However, oil that persists in the Beaufort Sea into the fall or winter and is not contained and/or removed may impact bowhead whales.

In the fall, the migration route of bowheads can be close to shore. If bowheads were moving through leads in the pack ice, or were concentrated in nearshore waters, or if the oil migrated seaward of the barrier islands, some bowhead whales might not be able to avoid oil slicks and could be subject to prolonged contamination. However, because the autumn migration of bowhead whales past Northstar extends over several weeks and because most of the whales travel along routes well north of Northstar, according to BPXA, only a small minority of the whales are likely to intercept patches of spilled oil. The effects of oil on these whales have been described in several documents (BPXA, 1999; Corps, 1999; Loughlin *et*

al. (1994), which NMFS reviewed during this rulemaking.

Ringed seals exposed to oil during the winter or early spring could die if exposed to heavy doses of oil for prolonged periods of time. Prolonged exposure could occur if fuel or crude oil was spilled in or reached nearshore waters, was spilled in a lead used by seals, or was spilled under the ice when seals have limited mobility. Individual seals residing in these habitats may not be able to avoid prolonged contamination and some would die. Studies in Prince William Sound indicated a long-term decline of 36 percent in numbers of molting harbor seals located on those haulouts affected by oil from the EXXON VALDEZ spill. In addition, newborn seal pups, if contacted by oil, will likely die from oiling through loss of insulation and resulting hypothermia (BPXA, 1999). Because the number of ringed and bearded seals in the central Beaufort Sea represents a relatively small portion of their total populations, and even large oil spills are not expected to extend over large areas, relatively few ringed and bearded seals would be impacted, and impacts on regional population size would be expected to be minor.

In addition to oil contacting marine mammals, oil spill cleanup activities could increase disturbance effects on either whales or seals, causing temporary disruption and possible displacement effects (MMS, 1996; BPXA, 1999). In the event of a large spill contacting and extensively oiling coastal habitats, the presence of response staff, equipment, and many low-flying aircraft involved in the cleanup will (depending on the time of the spill and cleanup), potentially displace seals and other marine mammals. However, the potential effects on bowhead and beluga whales are expected to be less than those on seals. The whales tend to occur well offshore where cleanup activities (during the open water season) are unlikely to be concentrated (BPXA, 1999). Also, because bowheads are transient and during the majority of the year, absence from the area would lessen the likelihood of impact by cleanup activities.

Estimated Level of Incidental Take

BPXA (1999) estimates that, during the ice-covered period, 91 (maximum 125) ringed seals and 1 (maximum 5) bearded seals potentially may be incidentally harassed during construction activities and 77 (maximum 105) ringed seals and 1 (maximum 5) bearded seals potentially may be incidentally harassed annually during oil production activities. BPXA estimates these takings by harassment during the ice-covered season by assuming that seals within 3.7 km (2.3 mi) of Seal Island, within 1.85 km (1.1 mi) of the pipeline construction corridor and related work areas, and within 0.66 km (0.4 mi) of ice roads will be "taken" annually. These anticipated levels of potential take are estimated based on observed densities of seals during recent (1997–1999) BPXA/LGL aerial surveys in the Northstar area during spring (Miller *et al.*, 1998; Link *et al.*, 1999; Moulton and Elliott, 1999) plus correction factors for seals missed by aerial surveyors. NMFS however, concurs with BPXA (1999) that these "take" estimates could result in an overestimate of the actual numbers of seals "taken," if all seals within these disturbance distances do not move from the area. It should be noted that NMFS does not consider an animal to be "taken" if it simply hears a noise, but does not make a biologically significant response to avoid that noise.

NMFS notes moreover, that BPXA has recently adopted new methods for on-ice monitoring of ringed seals which include the use of dogs to find seal structures. These new methods may result in a better estimate of the numbers of seals actually taken by different industrial activities.

During the open-water season, BPXA (1999) estimates that 7 (maximum 22) ringed seals, 1 spotted seal, 1–5 bearded seals, 173 (maximum 1,533) bowhead whales, less than 5 gray whales, and 6 (maximum 45) beluga whales may be incidentally harassed annually whether from construction or operations. BPXA assumes that seals and beluga whales within 1 km (0.6 mi) radius of Seal Island will be harassed incidental to construction and other activities on the island. Assumed "take" radii for bowhead whales are based on the distance at which the received level of construction noise from the island would diminish below 115 dB re 1 μPa. This distance has been estimated as 3.2 km (2 mi).

Although the potential impacts to the several marine mammal species known to occur in these areas is expected to be limited to harassment, a small number of marine mammals may incur lethal and serious injury. Most effects, however, are expected to be limited to temporary changes in behavior or displacement from a relatively small area near the construction site and will involve only small numbers of animals relative to the size of the populations. However, the inadvertent and unavoidable take by injury or mortality of small numbers of ringed seal pups may occur during ice clearing for construction of ice roads. In addition, some injury or mortality of whales or seals may result in the event that an oil spill occurs. As a result, BPXA requested that, because a small number of marine mammals might be injured or killed, that takings by mortality also be covered by the regulations. However, BPXA does not indicate the level of incidental take resulting from an oil spill at Northstar during either the ice-covered period or the open-water period. Because of the unpredictable occurrence, nature, seasonal timing, duration, and size of an oil spill occurring during the 5-year authorization period of these regulations, a specific prediction cannot be made of the estimated number of takes by an oil spill.

According to BPXA, in the unlikely event of a major oil spill at Northstar or from the associated subsea pipeline, numbers of marine mammals killed or injured are expected to be small and the effects on the populations negligible. While NMFS agrees that a major oil spill is unlikely during the 5-year period of these regulations, and believes that it is even less likely that spilled oil will intercept large numbers of marine mammals, NMFS cannot necessarily conclude that the effects on marine mammal populations will be negligible. Depending upon magnitude of the spill, its location and seasonality, an oil spill could have the potential to affect ringed and bearded seals, and/or bowhead and beluga whales. Because of the large population size of ringed seals and bearded seals and the small number of animals in the immediate vicinity of the Northstar facility, and because spilled oil is unlikely to disperse widely and, therefore, affect large numbers of seals, NMFS has determined that the effect on ringed and bearded seals will be negligible, even in the unlikely event that a major oil spill occurred.

Bowhead and beluga whales, however, while potentially less likely to come into contact with spilled oil because of their more prevalent offshore distribution, and potentially less seriously affected when in oiled waters provided their passage is not blocked, may be affected more seriously, if impacted, because of their smaller population sizes. However, based upon the Corps' analysis that there is less than a 10–percent chance of a major oil spill occurring during the 20–30 year lifespan of Northstar, and because NMFS believes that the potential for a major oil spill occurring during the 5-year period of these regulations and intercepting these species would be significantly less than 10 percent (approaching 1 percent), NMFS can

make a determination that the taking of these two species incidental to construction and operation at the Northstar oil production facility will have no more than a negligible impact on them.

Impacts on Subsistence Uses

This section contains a summary on the potential impacts from construction and operational activities on subsistence needs for marine mammals. A more detailed description can be found in BPXA's application. This information, in conjunction with information provided by the AEWC and NSB in their comments, and information provided in the Corps' FEIS, is accepted by NMFS as the best information available to date on the potential effects on the availability of marine mammals for subsistence uses in the Beaufort Sea area. Should new information on the impacts to subsistence harvest of bowhead whales become available that may be contrary to the determination made here, NMFS will consider the information during review of a request for future LOAs and/or their renewal.

Noise Impacts

The disturbance and potential displacement of bowhead whales and other marine mammals by sounds from vessel traffic, on-island construction activities (*e.g.,* impact hammering), and production activities are one of the principle concerns related to subsistence use of the area. The harvest of marine mammals is central to the culture and subsistence economies of the coastal North Slope communities. In particular, if elevated noise levels are displacing migrating bowhead whales farther offshore, this could make the harvest of these whales more difficult and dangerous for hunters. The harvest could also be affected if bowheads become more skittish when exposed to vessel or impact-hammering noise (BPXA, 1999).

Construction activities and associated vessel and helicopter support began in December 1999, and are expected to continue into September or October 2000, depending upon ice conditions. Few bowhead whales approach the Northstar area before the end of August, and subsistence whaling generally does not begin until after September 1 and occurs in areas well east of the construction site. Therefore, a substantial portion of the Northstar development is expected to be completed when no bowhead whales are nearby and when no whaling is underway. Insofar as possible, BPXA expects vessel and aircraft traffic near areas of particular concern for whaling will be completed before the end of August. In addition, BPXA does not expect impact hammering to occur during the period when subsistence hunting of migrating bowhead whales is underway. NMFS expects that construction activities that have the potential to disturb bowheads just prior to, and during the bowhead subsistence hunt, would be subject for discussion and resolution during the C&AA discussions. However, even without an agreement to curtail activities during this period, NMFS does not believe these activities will create sufficient level of noise to result in an unmitigable adverse affect on subsistence uses of the bowhead.

Underwater sounds from drilling and production operations on an artificial gravel island are not very strong, and are not expected to travel more than about 10 km (6.2 mi) from the source. BPXA states that even those bowheads traveling along the southern edge of the migration corridor are not expected to be able to even hear sounds from Northstar until the whales are well west of the main hunting area.

Drilling will begin in the latter part of 2000 but will temporarily cease in mid-2001 to allow installation and start-up of processing facilities. Drilling is expected to resume by November 2001, after the bowhead season, and continue until approximately November, 2002. Drilling is, therefore, unlikely to impact either the bowheads or the subsistence needs for this species, prior to the 2002 bowhead season.

Nuiqsut is the community closest to the area of the proposed activity, and it harvests bowhead whales only during the fall whaling season. In recent years, Nuiqsut whalers typically take zero to four whales each season (BPXA, 1999). Nuiqsut whalers concentrate their efforts on areas north and east of Cross Island, generally in water depths greater than 20 m (65 ft). Cross Island, the principle field camp location for Nuiqsut whalers, is located approximately 28.2 km (17.5 mi) east of the Northstar construction activity area.

Whalers from the village of Kaktovik search for whales east, north, and west of their village. Kaktovik is located approximately 200 km (124.3 mi) east of Northstar. The westernmost reported harvest location was about 21 km (13 mi) west of Kaktovik, near 70°10'N. 144°W. (Kaleak, 1996). That site is approximately 180 km (112 mi) east of Northstar.

Whalers from the village of Barrow search for bowhead whales much further from the Northstar area, greater than 250 km (>175 mi) west.

While the effects on migrating bowheads from noise created by Northstar construction or production are not expected to extend into the area where Nuiqsut hunters usually search for bowheads and, therefore, are not expected to affect the accessibility of bowhead whales to hunters, it is recognized that it is difficult to determine the maximum distance at which reactions occur (Moore and Clark, 1992). As a result, in order to avoid any unmitigable adverse impact on subsistence needs and to reduce potential interference with the hunt, the timing of various construction activities at Northstar as well as barge and aircraft traffic in the Cross Island area will be addressed in a C&AA between BPXA and the AEWC on behalf of its bowhead whale subsistence hunters. Also, NMFS believes that the September 1999, Technical Monitoring Plan that will be implemented by BPXA will provide information that will help resolve uncertainties about the effects of construction noise on the accessibility of bowheads to hunters.

While Northstar activity has some potential to influence subsistence seal hunting activities, the most important sealing area for Nuiqsut hunters is off the Colville delta, extending as far west as Fish Creek and as far east as Pingok Island (BPXA, 1999). Pingok Island is about 24 km (15 mi) west of Northstar. The peak season for seal hunting is during the summer months, but some hunting is conducted on the landfast ice in late spring. In summer, boat crews hunt ringed, spotted and bearded seals (BPXA, 1999). Thus, it is unlikely that construction activity will have a significant negative impact on Nuiqsut seal hunting.

Oil Spill Impacts

Oil spills have the potential to affect the hunt for bowhead whales. While oil spills from production drilling or pipelines could occur at any time of the year, NMFS believes that only if a significant spill occurred just prior to or during the subsistence bowhead hunt and spread into offshore waters would a reduction in the availability of bowhead whales for subsistence uses be possible. While unlikely, oil spills could extend into the bowhead hunting area under certain wind and current conditions. BPXA (1999) states that even in the event of a major spill, it is unlikely that more than a small number of those bowheads encountered by hunters would be contaminated by oil. However, disturbance associated with reconnaissance and cleanup activities could affect bowhead whales and, thus, accessibility of bowheads to hunters. As

a result, in the unlikely event that a major oil spill occurred during the relatively short fall bowhead whaling season, it is possible that bowhead whale hunting could be significantly affected. Moreover, even with no more than a negligible impact on those marine mammals that would be subject to subsistence hunting, individuals and communities as a whole, may perceive that the whale or seal meat or products are tainted or somehow unfit to eat or use. This could further impact subsistence hunting of these animals. However, NMFS believes that because (1) the probability of a large oil spill is less than 10 percent over the 20–30 years of Northstar operations, (2) bowhead whales in the vicinity of Northstar and hunted only in the months of September and October, limiting exposure time, (3) only under certain wind and sea conditions would it be likely that oil would reach the bowhead subsistence hunting area, (4) there will be an oil spill response program in effect that will be as effective as possible in Arctic waters, and (5) other mitigation measures have been suggested in the event that oil did contact bowheads, NMFS has determined that the construction and operation at Northstar is unlikely to result in an unmitigable adverse impact on subsistence uses of marine mammals during the period of these regulations. However, NMFS will continue to assess this determination as monitoring and mitigation measures are incorporated and improved through experience and as additional offshore developments are proposed. NMFS may revise or clarify its determinations during these rulemakings.

Impacts on Habitat

Invertebrates and fish, the nutritional basis for those whales and seals found in the Beaufort Sea, may be affected by construction and operation of the Northstar project. Fish may react to noise from Northstar with reactions being quite variable and dependent upon species, life history stage, behavior, and the sound characteristics of the water. Invertebrates are not known to be affected by noise. Benthic invertebrates would be affected by island and pipeline construction and overburden placement on the seabottom. Fish may be temporarily or permanently displaced by the island. These local, short-term effects are unlikely to have an impact on marine mammal feeding, except on a very local scale.

In the event of a large oil spill, fish and zooplankton in open offshore waters are unlikely to be seriously affected. Fish and zooplankton in shallow nearshore waters could sustain heavy mortality if an oil spill were to remain within an area for several days or longer. These affected nearshore areas may then be unavailable for use as feeding habitat for seals and whales. However, because these seals and whales are mobile, and bowhead feeding is uncommon along the coast near Northstar, effects would be minor during the open water season. In winter, effects of an oil spill on ringed seal food supply and habitat would be locally significant in the shallow nearshore waters in the immediate vicinity of the spill and oil slick. However, effects overall would be negligible.

Mitigation Measures

Several mitigation measures were proposed by BPXA to reduce harassment takes to the lowest level practicable and have been adopted, with modification, by NMFS. Additional measures may be added or modified in LOAs. Presently identified measures include:

(1) BPXA will begin winter construction activities in December. This will eliminate contact with lairs that are actively used as birthing lairs. Because it is still necessary to determine the number of structures impacted by winter construction, BPXA will survey the area(s) using trained dogs, to identify and avoid ringed seal structures by a minimum of 150 m (492 ft), if practicable.

(2) Other than work done on the primary ice roads, if construction activities are initiated in undisturbed areas BPXA will survey the area(s), using trained dogs, in order to identify and avoid ringed seal structures by a minimum of 150 m (492 ft); after March 20, activities should avoid, to the greatest extent practicable, disturbance of any located seal structure.

(3) During the open water season, BPXA will establish and monitor, during the daytime, a 190 dB re 1 µPa safety range for seals around the island for those construction activities with SPLs that exceed that level. Establishing the safety range will require the collection and analysis of sound attenuation in the waters of the Northstar site.

(4) While whales are unlikely to approach the island during impact hammering or other noisy activities, a 180 dB re 1 µPa safety zone will be established and monitored during daylight hours around the island.

(5) If any marine mammals are observed within their respective safety range, operations will cease until such time as the observed marine mammals have left the safety zone.

(6) Project scheduling indicates that impact hammering will not occur during the period for subsistence hunting of westward migrating bowhead whale.

(7) Helicopter flights to support Northstar construction will be limited to a corridor from Seal Island to the mainland, and, except when limited by weather, will maintain a minimum altitude of 1,000 ft (305 m).

(8) Drilling activities will temporarily cease during the bowhead whale migration during the first year of drilling activity (*i.e.*, September, 2001).

Monitoring Measures

A detailed description of BPXA's proposed monitoring program for implementation during the construction phase at Northstar can be found in both the revised BPXA application (BPXA, 1999) and revised Technical Monitoring Plan (LGL, LGL and Greeneridge, 1999). The open-water season portion of BPXA's May 6, 1999, monitoring plan was reviewed by scientists and others attending the annual open-water peer-review workshop held in Seattle on July 1, 1999. The Technical Monitoring Plan was revised to incorporate recommendations made during this meeting and submitted to NMFS on September 1, 1999. This document was provided to the public during the comment period on the proposed rule. Peer review on the on-ice portion of the plan was conducted on October 14–15, 1999. Recommendations from that workshop were incorporated into work conducted this past winter and will be incorporated, as appropriate, into future monitoring plans. A copy of the September 1, 1999, revised monitoring plan is available upon request (see **ADDRESSES**). Peer review of technical plans for monitoring during production activities will be conducted at future peer review meetings.

A summary of marine mammal monitoring that will be conducted during Northstar construction this year is provided here.

Monitoring will employ both marine mammal observations and acoustic measurements and recordings. During the open-water period, monitoring will consist of (1) acoustic measurements of sounds produced by construction activities through boat-based hydrophones, sonobuoys deployed by boat, and autonomous seafloor acoustic recorders; (2) observations of marine mammals (primarily seals) from an elevated platform on Seal Island, which will be made during periods with and without construction underway; and, (3)

acoustic monitoring of the bowhead whale migration. Additional monitoring may be required by NMFS through the peer review workshops.

During the ice-covered season, BPXA proposes to continue an ongoing (since the spring, 1997) Before-After/Control-Impact Study on the distribution and abundance of ringed seals in relation to development of the offshore oil and gas resources in the central Beaufort Sea. Collection and analysis of data before and after construction is expected to provide a reliable method for assessing the impact of oil and gas activities on ringed seal distribution in the Northstar construction area. Other winter/spring monitoring will include (1) on-ice searches for ringed seal lairs in areas where construction starts in the mid-March through April period, (2) assessment of abandonment rates for seal holes, and (3) acoustic measurements of sounds and vibrations from construction. Additional monitoring may be required by NMFS through the peer review workshops.

NMFS expects that the technical monitoring plan for production will be submitted to NMFS later this year and subject to review by NMFS biologists and revised appropriately prior to implementation.

Reporting Measures

BPXA is required to provide two reports annually to NMFS. The first report is due 90 days after either the ice roads are no longer usable or spring aerial surveys are completed, whichever is later. The second report is required to be forwarded to NMFS 90 days after the formation of ice in the central Alaskan Beaufort Sea prevents water access to Northstar. These reports must include the dates and locations of construction activities, details of marine mammal sightings, estimates of the amount and nature of marine mammal takes, and any apparent effects on accessibility of marine mammals to subsistence hunters.

A draft final technical report must be submitted to NMFS by April 1 of each year. The final technical report must fully describe the methods and results of all monitoring tasks and a complete analysis of the data. The draft final report will be subject to peer review before being finalized by BPXA.

Determinations

NMFS has determined that the impact of construction and operation of the Northstar project in the U.S. Beaufort Sea will result in no more than a temporary modification in behavior by certain species of cetaceans and pinnipeds. During the ice-covered season, pinnipeds close to the island may be subject to incidental harassment due to the localized displacement from construction of ice roads, from transportation activities on those roads, and from construction and production activities at Northstar. As cetaceans will not be in the area during the ice-covered season, they will not be affected.

During the open-water season, the principal construction- and operations-related noise activities will be impact hammering, helicopter traffic, vessel traffic, and other general construction/production activity on Seal Island. Sheet-pile driving is expected to be completed prior to whales being present in the area. Sounds from construction/production activities on the island are not expected to be detectable more than about 5–10 km (3.1–6.2 mi) offshore of the island. Disturbance to bowhead or beluga whales by on-island activities will be limited to an area substantially less than that distance. Helicopter traffic will be limited to nearshore areas between the mainland and the island and is unlikely to approach or disturb whales. Barge traffic will be located mainly inshore of the whales and will involve vessels moving slowly, in a straight line, and at constant speed. Little disturbance or displacement of whales by vessel traffic is expected. While behavioral modifications may be made by these species to avoid the resultant noise, this behavioral change is expected to have no more than a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of operations, because the activity is in shallow waters inshore of the main migration corridor for bowhead whales and far inshore of the main migration corridor for belugas, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment will be avoided through the incorporation of the mitigation measures mentioned in this document. No rookeries, areas of concentrated mating or feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations.

Because bowhead whales are east of the construction/production area in the Canadian Beaufort Sea until late August/early September, activities at Northstar are not expected to impact subsistence hunting of bowhead whales prior to that date. Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs will be the subject of consultation between BPXA and subsistence users.

Also, while construction/production at Northstar has some potential to influence seal hunting activities by residents of Nuiqsut, because (1) the peak sealing season is during the winter months, (2) the main summer sealing is off the Colville Delta, and (3) the zone of influence from Northstar on beluga and seals is fairly small, NMFS believes that Northstar construction/production will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

NMFS has determined that the potential for an offshore oil spill occurring is low (less than 10 percent over 20–30 years (Corps, 1999)) and the potential for that oil intercepting whales or seals is even lower (about 1.2 percent (Corps, 1999)). Because of this low potential and because of the seasonality of bowheads, NMFS has determined that the taking of marine mammals incidental to construction and operation at the Northstar oil production facility will have no more than a negligible impact on them. In addition, because there will be an oil spill response program in effect that will be as effective as possible in Arctic waters, and because other mitigation measures have been suggested in the event that oil did contact bowheads, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses of marine mammals.

Changes to the Proposed Rule

In addition to the modifications made to the proposed rule as a result of comments discussed previously and corrections of minor typographical errors, the following amendments have been made to the document.

Section 216.207 has been amended to clarify that this paragraph is intended only for the initial submission of an application for an LOA, not for subsequent renewals.

Section 216.209(a)(2) has been amended to note the time needed for receipt of the monitoring reports required under 216.205.

ESA

On March 4, 1999, NMFS concluded consultation with the Corps on permitting the construction and operation at the Northstar site. The finding of that consultation was that construction and operation at Northstar is not likely to jeopardize the continued existence of the bowhead whale stock.

No critical habitat has been designated for this species; therefore, none will be affected. Because issuance of a small take authorization to BPXA under section 101(a)(5) of the MMPA is a Federal action, NMFS has completed section 7 consultation on this action. The finding of this consultation was that the issuance of the authorization was unlikely to adversely affect the bowhead whale.

NEPA

On June 12, 1998 (63 FR 32207), the Environmental Protection Agency (EPA) noted the availability for public review and comment a DEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until August 31, 1998 (63 FR 43699, August 14, 1998). On February 5, 1999 (64 FR 5789), EPA noted the availability for public review and comment, a FEIS prepared by the Corps under NEPA on Beaufort Sea oil and gas development at Northstar. Comments on that document were accepted by the Corps until March 8, 1999. For information on obtaining a copy of the FEIS, please contact the Corps (see **ADDRESSES**). Based upon a review of the FEIS, the comments received on the DEIS and FEIS, and the comments received during this rulemaking, NMFS has adopted the Corps FEIS and has determined that it is not necessary to prepare supplemental NEPA documentation.

Classification

This action has been determined to be significant for purposes of Executive Order 12866.

Until these regulations are effective, BPXA cannot be issued an LOA authorizing takings incidental to construction and operation at Northstar. Therefore, since these regulations relieve a restriction on BPXA, the prohibitions on the issuance of an LOA, are not subject to a 30-day delay in effective date under 5 U.S.C. 553(d)(1).

The Chief Counsel for Regulation of the Department of Commerce certified, at the proposed rule stage, to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. This final rule will affect only one or two large oil producing companies which, by definition, are not small businesses. It will also affect a small number of contractors providing services related to monitoring the impact of oil development in the Beaufort Sea on marine mammals. Some of the affected contractors may be small businesses, but the number involved would not be substantial. Further, since the monitoring requirement is what would lead to the need for their services, the economic impact on them would be beneficial. For all the above reasons, a regulatory flexibility analysis is not required.

This final rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). These requirements have been approved by OMB under control number 0648–0151, and include an application for an LOA, an interim report, and a final report. Other information requirements in the rule are not subject to the PRA since they apply only to a single entity and, therefore, are not contained in a rule of general applicability.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for the approved collections-of-information are estimated to be approximately 3 hours for an application for a LOA, and 80 hours each for interim and final reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: May 18, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart R is added to part 216 to read as follows:

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

Sec.

Subpart R—Taking of Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the U.S. Beaufort Sea

§ 216.200 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in oil and gas development activities in areas within state and/or Federal waters in the U.S. Beaufort Sea specified in paragraph (a) of this section. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.208 include, but may not be limited to, site construction, including ice road and pipeline construction, vessel and helicopter activity; and oil production activities, including ice road construction, and vessel and helicopter activity, but excluding seismic operations.

(a)(1) Northstar Oil and Gas Development; and

(2) [Reserved]

(b) The incidental take by harassment, injury or mortality of marine mammals under the activity identified in this section is limited to the following species: bowhead whale (*Balaena mysticetus*), gray whale (*Eschrichtius robustus*), beluga whale (*Delphinapterus leucas*), ringed seal (*Phoca hispida*), spotted seal (*Phoca largha*) and bearded seal (*Erignathus barbatus*).

§ 216.201 Effective dates.

Regulations in this subpart are effective from May 25, 2000, until May 25, 2005.

§ 216.202 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.208, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by harassment, injury, and mortality within the area described in § 216.200(a), provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 216.200 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and on the availability of marine mammals for subsistence uses.

§ 216.203 Prohibitions.

Notwithstanding takings authorized by § 216.200 and by a Letter of Authorization issued under §§ 216.106 and 216.208, no person in connection with the activities described in § 216.200 shall:

(a) Take any marine mammal not specified in § 216.200(b);

(b) Take any marine mammal specified in § 216.200(b) other than by incidental, unintentional harassment, injury or mortality;

(c) Take a marine mammal specified in § 216.200(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or a Letter of Authorization issued under § 216.106.

§ 216.204 Mitigation.

The activity identified in § 216.200(a) must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.200, the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.208 must be utilized.

§ 216.205 Measures to ensure availability of species for subsistence uses.

When applying for a Letter of Authorization pursuant to § 216.207, or a renewal of a Letter of Authorization pursuant to § 216.209, the applicant must submit a Plan of Cooperation that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(a) A statement that the applicant has notified and met with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding timing and methods of operation;

(b) A description of what measures the applicant has taken and/or will take to ensure that oil development activities will not interfere with subsistence whaling or sealing;

(c) What plans the applicant has to continue to meet with the affected communities to notify the communities of any changes in operation.

§ 216.206 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §§ 216.106 and 216.208 for activities described in § 216.200 are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Alaska Region, National Marine Fisheries Service, or his/her designee, by letter or telephone, at least 2 weeks prior to initiating new activities potentially involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization issued pursuant to § 216.106 and § 216.208.

(c) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization.

(d) Unless specified otherwise in the Letter of Authorization, the Holder of that Letter of Authorization must submit interim reports to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 90 days after completion of the winter monitoring season (approximately September 15th), and 90 days after the open water monitoring season (approximately February 1st). This report must contain all information required by the Letter of Authorization.

(e) A draft annual comprehensive report must be submitted by May 1st of the year following the issuance of a LOA;

(f) A final annual comprehensive report must be submitted within the time period specified in the governing Letter of Authorization.

(g) A final comprehensive report on all marine mammal monitoring and research conducted during the effective period of the regulations in this subpart must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if renewal of the regulations will not be requested.

§ 216.207 Applications for Letters of Authorization.

(a) To incidentally take bowhead whales and other marine mammals pursuant to the regulations in this subpart, the U.S. citizen (see definition at § 216.103) conducting the activity identified in § 216.200, must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.106 and 216.208, or a renewal under § 216.209.

(b) The application for an initial Letter of Authorization must be submitted to the National Marine Fisheries Service at least 180 days before the activity is scheduled to begin.

(c) Applications for initial Letters of Authorization must include all information items identified in § 216.104(a).

(d) NMFS will review an application for an initial Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, will publish a notice of receipt of a request for incidental taking and, in accordance with Administrative Procedure Act requirements, a proposed amendment to § 216.200(a). In conjunction with amending § 216.200(a), the National Marine Fisheries Service will provide a minimum of 45 days for public comment on the application for an initial Letter of Authorization.

(e) Upon receipt of a complete application for an initial Letter of Authorization, and at its discretion, the National Marine Fisheries Service may submit the monitoring plan to members of a peer review panel for review and/or schedule a workshop to review the plan. Unless specified in the Letter of Authorization, the applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an initial Letter of Authorization.

§ 216.208 Letters of Authorization.

(a) A Letter of Authorization, unless suspended, revoked or not renewed, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually

subject to annual renewal conditions in § 216.209.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including any requirements for the independent peer-review of proposed monitoring plans.

(c) Issuance and renewal of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.209 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.208 for the activity identified in § 216.200 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.207 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.205, and the Letter of Authorization issued under § 216.208, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable, and the Plan of Cooperation required under § 216.205; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.204 and the Letter of Authorization issued under §§ 216.106 and 216.208, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.208 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a minimum of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data that indicates that the determinations made in this subpart are in need of reconsideration,

(2) The Plan of Cooperation, and

(3) The proposed monitoring plan.

(c) A notice of issuance or denial of a Renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.210 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of §§ 216.106 and 216.208, except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by the National Marine Fisheries Service, issued pursuant to §§ 216.106 and 216.208 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.209, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.200(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.208 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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Federal Register

Thursday,
May 25, 2000

Part X

The President

Executive Order 13157—Increasing Opportunities for Women-Owned Small Businesses

Federal Register
Vol. 65, No. 102
Thursday, May 25, 2000

Presidential Documents

Title 3—

The President

Executive Order 13157 of May 23, 2000

Increasing Opportunities for Women-Owned Small Businesses

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631, *et seq.*, section 7106 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355), and the Office of Federal Procurement Policy, 41 U.S.C. 403, *et seq.*, and in order to strengthen the executive branch's commitment to increased opportunities for women-owned small businesses, it is hereby ordered as follows:

Section 1. *Executive Branch Policy.* In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(g)(1), it shall be the policy of the executive branch to take the steps necessary to meet or exceed the 5 percent Government-wide goal for participation in procurement by women-owned small businesses (WOSBs). Further, the executive branch shall implement this policy by establishing a participation goal for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year.

Sec. 2. *Responsibilities of Federal Departments and Agencies.* Each department and agency (hereafter referred to collectively as "agency") that has procurement authority shall develop a long-term comprehensive strategy to expand opportunities for WOSBs. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year. The agency's plans shall include, where appropriate, methods and programs as set forth in section 4 of this order.

Sec. 3. *Responsibilities of the Small Business Administration.* The Small Business Administration (SBA) shall establish an Assistant Administrator for Women's Procurement within the SBA's Office of Government Contracting. This officer shall be responsible for:

(a) working with each agency to develop and implement policies to achieve the participation goals for WOSBs for the executive branch and individual agencies;

(b) advising agencies on how to implement strategies that will increase the participation of WOSBs in Federal procurement;

(c) evaluating, on a semiannual basis, using the Federal Procurement Data System (FPDS), the achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

(d) preparing a report, which shall be submitted by the Administrator of the SBA to the President, through the Interagency Committee on Women's Business Enterprise and the Office of Federal Procurement Policy (OFPP), on findings based on the FPDS, regarding prime contracts and subcontracts awarded to WOSBs;

(e) making recommendations and working with Federal agencies to expand participation rates for WOSBs, with a particular emphasis on agencies in which the participation rate for these businesses is less than 5 percent;

(f) providing a program of training and development seminars and conferences to instruct women on how to participate in the SBA's 8(a) program, the Small Disadvantaged Business (SDB) program, the HUBZone program, and other small business contracting programs for which they may be eligible;

(g) developing and implementing a single uniform Federal Government-wide website, which provides links to other websites within the Federal system concerning acquisition, small businesses, and women-owned businesses, and which provides current procurement information for WOSBs and other small businesses;

(h) developing an interactive electronic commerce database that allows small businesses to register their businesses and capabilities as potential contractors for Federal agencies, and enables contracting officers to identify and locate potential contractors; and

(i) working with existing women-owned business organizations, State and local governments, and others in order to promote the sharing of information and the development of more uniform State and local standards for WOSBs that reduce the burden on these firms in competing for procurement opportunities.

Sec. 4. *Other Responsibilities of Federal Agencies.* To the extent permitted by law, each Federal agency shall work with the SBA to ensure maximum participation of WOSBs in the procurement process by taking the following steps:

(a) designating a senior acquisition official who will work with the SBA to identify and promote contracting opportunities for WOSBs;

(b) requiring contracting officers, to the maximum extent practicable, to include WOSBs in competitive acquisitions;

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-protege programs, which include women-owned small business firms; and

(e) offering industry-wide as well as industry-specific outreach, training, and technical assistance programs for WOSBs including, where appropriate, the use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

Sec. 5. *Subcontracting Plans.* The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or section 834 of Public Law 101–189, as amended (15 U.S.C. 637 note), including subcontracting plans involving WOSBs.

Sec. 6. *Action Plans.* If a Federal agency fails to meet its annual goals in expanding contract opportunities for WOSBs, it shall work with the SBA to develop an action plan to increase the likelihood that participation goals will be met or exceeded in future years.

Sec. 7. *Compliance.* Independent agencies are requested to comply with the provisions of this order.

Sec. 8. *Consultation and Advice.* In developing the long-term comprehensive strategies required by section 2 of this order, Federal agencies shall consult with, and seek information and advice from, State and local governments, WOSBs, other private-sector partners, and other experts.

Sec. 9. *Judicial Review.* This order is for internal management purposes for the Federal Government. It does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
May 23, 2000.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2412/P.L. 106–203

To designate the Federal building and United States courthouse located at 1300 South Harrison Street in Fort Wayne, Indiana, as the "E. Ross Adair Federal Building and United States Courthouse". (May 22, 2000; 114 Stat. 310)

S. 2370/P.L. 106–204

To designate the Federal building located at 500 Pearl Street in New York City, New York, as the "Daniel Patrick Moynihan United States Courthouse". (May 23, 2000; 114 Stat. 311)

Last List May 22, 2000

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106th Congress, 2nd Session, 2000

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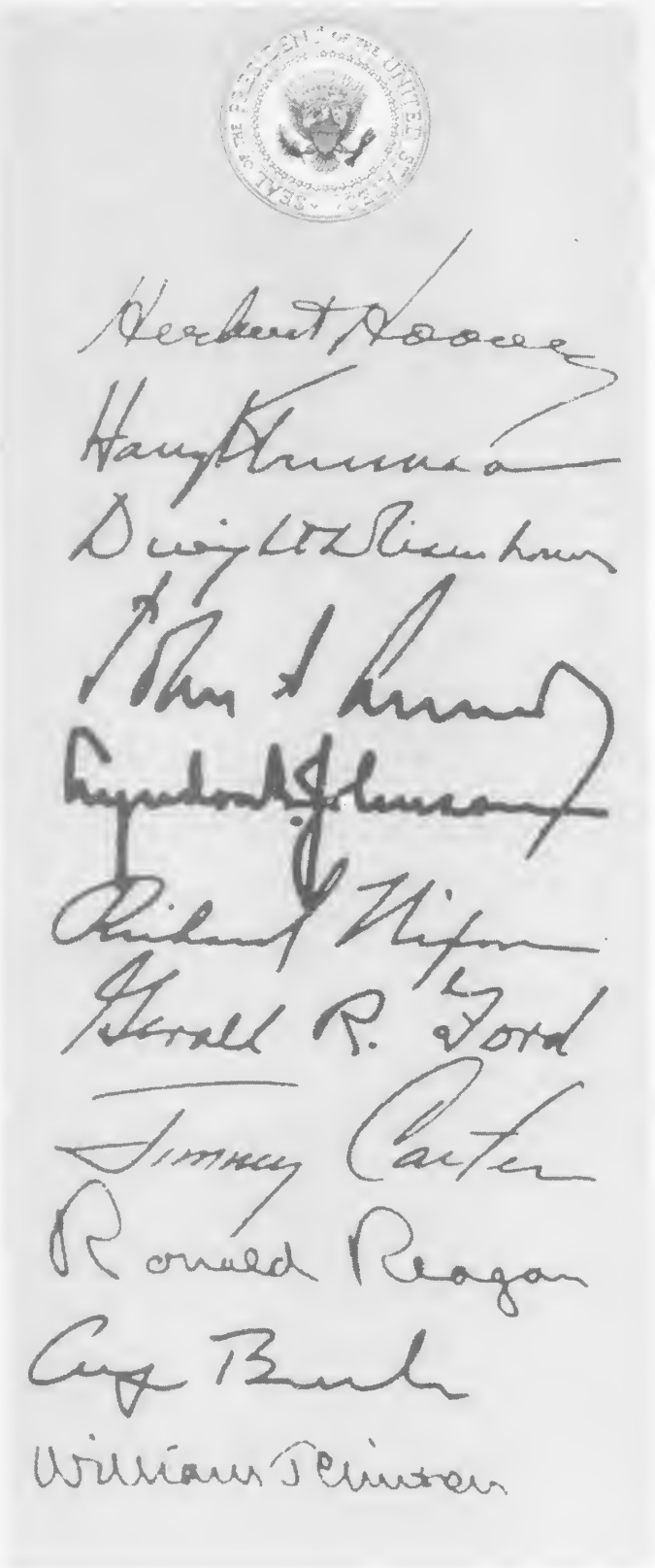

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