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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–025–2]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the gypsy moth quarantine and regulations by adding 3 areas in Ohio and 14 areas in Wisconsin to the list of generally infested areas. The interim rule was necessary to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule was effective on May 11, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: coanne.e.o'hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 11, 1998 (63 FR 25747–25748, Docket No. 98–025–1), we amended the gypsy moth quarantine and regulations in 7 CFR part 301 by adding 3 areas in Ohio and 14 areas in Wisconsin to the list in § 301.45–3(a) of generally infested areas.

Comments on the interim rule were required to be received on or before July 10, 1998. We received one comment by that date. The comment was from a State government. The comment is discussed below.

The commenter did not oppose amending the gypsy moth quarantine and regulations by adding areas in Ohio and Wisconsin. However, the commenter suggested that the Animal and Plant Health Inspection Service review the current gypsy moth situation in Salt Lake County, UT. The commenter believed that Salt Lake County, UT, may have been prematurely removed from the gypsy moth quarantine and regulations in 1996. The commenter said that Utah's attempts at complete eradication of the gypsy moth have been unsuccessful, and populations of the gypsy moth still infest Salt Lake County, UT. We are currently reviewing the gypsy moth situation in the State of Utah and if we find that there is an infestation of gypsy moth in that State, we will publish an interim rule in the **Federal Register** adding any affected areas in Utah to the list of generally infested areas for gypsy moth.

Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988 and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This document affirms an interim rule that amended the gypsy moth quarantine and regulations by adding 3 areas in Ohio and 14 areas in Wisconsin to the list of generally infested areas. This action was necessary to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This action affects the interstate movement of regulated articles and outdoor household articles (OHA's) from and through gypsy moth regulated areas in Ohio and Wisconsin. There are several types of restrictions that apply to these newly quarantined areas in these States. These restrictions will have their primary impact on persons moving OHA's, nursery stock, logs and wood chips, and mobile homes interstate from a generally infested area to any area that is not generally infested.

Under the regulations, OHA's may not be moved interstate from a generally infested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of any life stage of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

With two exceptions, regulated articles (for example, logs, pulpwood, and wood chips; mobile homes; and nursery stock) may not be moved interstate from a generally infested area to any area that is not generally infested unless they are accompanied by a certificate or limited permit issued by an inspector. The first exception is that a regulated article may be moved from a generally infested area without a certificate if it is moved by the USDA for experimental or scientific purposes and is accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service. The second exception is that logs, pulpwood, and wood chips may be moved without a certificate or limited permit if the person moving the articles attaches a statement with the waybill stating that he or she has inspected the articles and has found them free of any lifestages of the gypsy moth. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving regulated articles interstate from a generally infested area to any area that is not generally infested may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. These documents may also be self-issued under a compliance agreement. Certificates for interstate movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHA's reveals gypsy moth, treatment

is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, $100 to $150 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for qualified certified applicators located in generally infested areas. It is estimated that these businesses will average $100 to $150 per month in additional income per business. A few of the newly quarantined counties contain large urban areas that may have several hundred shipments annually containing OHA's that will require inspection to move interstate from the generally infested area. Thus, there will likely be a need to train additional qualified certified applicators in those areas.

There are approximately 268 entities in the newly quarantined areas that will incur costs from the interim rule. These entities include 118 nurseries, 28 loggers/sawmills, 35 Christmas tree growers, and 87 mobile home movers. All of these establishments are believed to be small entities. In 1992, there were approximately 4,020 shipments of shrubs and trees, nursery items, and Christmas trees that moved from the newly quarantined areas. Of these 4,020 shipments, only 1,080 shipments were to nonregulated areas. Establishments that do move shrubs and trees, nursery items, and Christmas trees from generally infested areas will need to be inspected, either by a State or APHIS inspector. If the inspection reveals signs of gypsy moth, the establishment will have to be treated in order to ship regulated articles outside the generally infested area. We estimate that, annually, approximately 8 percent of the shipments will require treatment, and that the average area to be treated will be 1,300 acres. At an average treatment cost of $10 to $20 per acre, we estimate the total annual cost to the establishments will be $13,000 to $26,000.

The Christmas tree industry and establishments that sell other forest products and that move their products interstate from the newly quarantined areas will also bear direct costs from the interim rule. There are approximately 268 farms that sell forest products and Christmas trees in the newly quarantined areas. These account for 3.8 percent of the total number of such farms in Ohio and Wisconsin. All of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect these farms and issue certificates and permits. We estimate that less than four percent of all these farms will be found to contain gypsy moth and, therefore, require treatment in order to ship trees. It is expected that, in most cases, Christmas tree farms will be free of gypsy moth and Christmas tree growers will meet the requirements for certification by having inspectors certify that the tree farms are free from gypsy moth. This alternative is less costly than inspecting or treating each individual shipment of trees and thus will minimize the economic impact of the change to the regulations for the newly quarantined areas.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 63 FR 25747–25748 on May 11, 1998.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 22nd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–34524 Filed 12–29–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 217

[INS No. 1799–96]

RIN 1115–AB93

Finalizing Without Change the Interim Regulations that Added Visa Waiver Pilot Program Countries

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Visa Waiver Pilot Program (VWPP) permits nationals from designated countries who participate in the VWPP to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure, without first obtaining a visa. during the past several years, the Immigration and Naturalization Service (Service) has published several interim regulations in the **Federal Register** adding countries to participate in the VWPP and eliminating probationary entry status. This final rule adopts without change those interim regulations.

DATES: This final rule is effective January 29, 1999.

FOR FURTHER INFORMATION CONTACT:

Dominica Gutierrez, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW, Room 4064, Washington, DC 20536, telephone number: (202) 514–3019.

SUPPLEMENTARY INFORMATION:

Public Law 99–603

Section 313 of the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99–603, added section 217 to the Immigration and Nationality Act (Act), 8 U.S.C. 1187, which established the VWPP. That original provision authorized the participation of eight countries in the Pilot Program. Accordingly, the Service initially designated the United Kingdom, Japan, France, Switzerland, Germany, Sweden, Italy, and the Netherlands, as the eight (8) countries to participate in the VWPP.

Public Law 101–649

Section 210 of the Immigration Act of 1990 (IMMACT 90), Public Law 101–649, dated November 29, 1990, further amended the VWPP removing the eight-country cap and extending the provisions to all countries that met the qualifying provisions contained in section 217 of the Act. Accordingly, the service, published six interim regulations in the **Federal Register** adding the following 18 countries:

Country	Effective date	Federal Register, citation
(1) Andorra	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(2) Austria	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(3) Belgium	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(4) Denmark	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(5) Finland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(6) Iceland	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(7) Liechtenstein	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(8) Luxembourg	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(9) Monaco	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(10) New Zealand	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(11) Norway	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(12) San Marino	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(13) Spain	Oct. 1, 1991	56 FR 46716, Sept. 13, 1991.
(14) Brunei	July 29, 1993	58 FR 40581, July 29, 1993.
(15) Argentina	July 8, 1996	61 FR 35598, July 8, 1996.
(16) Australia	July 29, 1996	61 FR 39271, July 29, 1996.
(17) Slovenia	Sept. 30, 1997	62 FR 50998, Sept. 30, 1997.
(18) Ireland	Sept. 30, 1997	62 FR 50998, Sept. 30, 1997.

On March 28, 1995, the Service published and interim regulation in the **Federal Register** at 60 FR 15855 adding Ireland as a VWPP country on a probationary basis. The interim regulation published at 62 FR 50998 on September 30, 1997, removed this probationary status.

Public Comments

All six interim regulations invited interested persons to submit written comments concerning the VWPP and the addition of the 18 countries that were designated to participate. The Service did not receive comments for those interim regulations published in the **Federal Register** at 56 FR 46716, 58 FR 40581, 60 FR 15855, 61 FR 35598, and 62 FR 50998. However, the Service did receive one comment on the interim regulation published in the **Federal Register** at 61 FR 39271, which added Australia to the list of participating VWPP countries. The commenter questioned whether Australia met the reciprocity requirement in section 217 of the Act. The Service has determined that Australia does meet the reciprocity requirement in section 217 of the Act under the provisions of Australia's Electronic Travel Authority (ETA) system. Accordingly, Australia will still remain as a designated VWPP country.

This final rule is being promulgated in conjunction with the Department of State (DOS) in accordance with the requirements in section 217 of the Act, as amended. (See DOS rule published elsewhere in this issue of the **Federal Register**.)

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The interim regulations that were previously published merely removed restrictions for both the traveling public and United States businesses. This final rule adopts without change those interim regulations.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

Unfunded Mandates Reform Act of 1995

This rule will not result in expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not sifnificantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 217

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

Accordingly, the interim regulations amending 8 CFR part 217 which were published at 56 FR 46716 on September 13, 1991, 58 FR 40581 on July 29, 1993, 60 FR 15855 on March 28, 1995, 61 FR 35598 on July 8, 1996, 61 FR 39271 on July 29, 1996, and 62 FR 50998 on September 30, 1997, are adopted as a final rule without change.

Dated: December 14, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–34473 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–005–2]

Veterinary Services User Fees; Embryo Collection Center Approval Fee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the existing user fees for the inspection and approval of embryo collection centers. Existing user fees require embryo collection centers to pay user fees based on hourly rates for inspections and approval. We are replacing the hourly rates for this specific service with a flat rate annual user fee that will cover the cost of approval and all required inspections of the facility for that year. We are taking this action in order to make the collection of user fees simpler and to allow centers to better predict the costs of APHIS' inspection and approval.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Division, ABS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import-related and export-related services for live animals and birds and animal products are contained in 9 CFR part 130. Section 130.21 lists the user fees charged for APHIS' inspection and approval of export facilities, including embryo collection centers, within the United States. Section 130.8 lists miscellaneous flat rate user fees.

On July 28, 1998, we published in the **Federal Register** (63 FR 40200–40202, Docket No. 98–005–1) a proposal to amend the regulations by revising the user fees for the inspection and approval of embryo collection centers. Existing user fees require embryo collection centers to pay user fees based on hourly rates for inspections and approval. We are replacing the hourly rates for this specific service with a flat rate annual user fee that will cover the cost of approval and all required inspections of the facility for that year.

We solicited comments concerning our proposal for 60 days ending September 28, 1998. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

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

User fees to reimburse APHIS for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR 130. We are amending the regulations by removing the hourly rate user fees for inspection and approval of embryo collection centers and the animals in them. We are replacing the hourly rates with a flat rate annual user fee, which does not include costs for inspecting any animals in the facility.

The flat rate annual user fee was arrived at using the average number of hours required for an APHIS inspector to complete an inspection (including travel time), the average number of inspections performed during a year (two per center), the average direct labor involved, and proportional share of support costs, overhead, and departmental charges.

The flat rate annual user fee of $278.50 per center should not be significantly different from what customers have paid per year in the past for inspection and approval at hourly rates. Variations should generally be a result of different travel times to individual centers.

There are approximately 90 currently licensed embryo collection centers in the United States. Under Small Business Administration (SBA) guidelines, an embryo collection center with less than $5 million in annual sales qualifies as a small entity. While we could not determine exactly how many of the embryo collection centers are ''small entities,'' it is likely that the majority of them have less than $5 million in annual sales. However, since the flat fee should not be significantly different from what customers have paid in the past for approval and inspection at hourly rates, the effect on customers should be minimal.

This action should also have a minimal impact on the customers of embryo collection centers, whether small or large. Any change in cost to users that occurs as a result of this action should be small, relative to the product value of even a small operation. An average animal embryo sells for approximately $400, with certain animal embryos ranging in price from $100 to $2500 each. An average collection center collects approximately 3,400 animal embryos a year. Considering the volume of animal embryos collected at collection facilities per year and the value of individual embryos, the effect on user costs should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12988

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

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114,

114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.8, paragraph (a) is amended by adding a new entry at the end of the table to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	User fee
* * * * * * *	
Embryo collection center inspection and approval	$278.50 for all inspections required during the year for facility approval.

* * * * *

§ 130.21 [Amended]

3. In § 130.21, paragraph (a)(6) is amended by removing the words ''embryo or'' and adding the words ''artificial insemination center or a'' in their place.

Done in Washington, DC, this 22nd day of December 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–34523 Filed 12–29–98; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The amendments are intended to allow application of technological developments that have occurred after the original rule was adopted in 1989, while achieving the original goals of facilitating the NRC's ability to comply with the schedule for decision on the construction authorization for the repository contained in Section 114(d) of the Nuclear Waste Policy Act, and providing for a thorough technical review of the license application and equitable access to information for the parties to the hearing.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 1997 (62 FR 60789), the NRC published a proposed rule in the **Federal Register** that would have amended NRC's regulations in 10 CFR Part 2, Subpart J. In response to the request of a representative of Clark County, Nevada, the NRC extended the comment period which would have expired on January 27, 1998, until March 30, 1998 (63 FR 5315, February 2, 1998). The proposed rule was intended to maintain the primary functions of the Licensing Support System (LSS) which are:

(1) Discovery of documents before the license application is filed;

(2) Electronic transmission of filings by the parties during the proceeding;

(3) Electronic transmission of orders and decisions related to the proceeding; and

(4) Access to an electronic version of the docket.

The proposed rule would have eliminated the current requirement in 10 CFR Part 2, Subpart J, for a centralized ''Licensing Support System'' administered by the NRC and therefore also would have eliminated the requirement for an LSS Administrator to ensure the viability of the central database. To replace these features of the existing rule, the proposed rule would have required that each potential party, including the NRC and the Department of Energy (DOE), make its documentary material available in electronic form to all other participants beginning in the pre-license application phase. For the purposes of this rule, the pre-application phase would have begun on the date that the President submits the site recommendation to Congress. Although the mechanism to implement this requirement is not stated in the proposed rule, the availability of the Internet to link geographically dispersed sites appears to have the potential to satisfy the proposed rule.

Also under the proposed rules, *documentary material* would have been defined as the material upon which a party intends to rely in support of its position in the licensing proceeding; any material which is relevant to, but does not support, that material or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party.

A Pre-License Application Presiding Officer would resolve any disputes over electronic access to documents during the pre-license application phase. Potential parties would be required to certify to the Pre-License Application Presiding Officer that they have complied with the requirement to provide electronic access to their documentary material.

The NRC requested comments on two alternatives regarding the LSS Advisory Review Panel. In the proposed rule, because the concept of the LSS would be replaced, the requirement for an LSS Advisory Review Panel would have been modified so the panel could advise the Secretary of the Commission regarding standards and procedures for electronic access to documents and for maintenance of the electronic docket. This would have required renaming of the advisory committee and redrafting of the committee charter. However, the NRC also requested comments, particularly from potential parties to the HLW repository licensing proceeding, on the alternative of replacing the Advisory Review Panel with a more informal users group.

II. Comments on the Proposed Rule

The Commission received six comment letters on the proposed rule. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room located at 2120 L Street, NW (Lower Level), Washington, D.C. The comments on the proposed rule came from the DOE and five other entities which are represented on the LSS Advisory Review Panel. The NRC conducted a meeting of the LSS Advisory Review Panel (LSSARP) in Las Vegas, Nevada, on February 24, 1998, to receive comments of the LSSARP

members on the proposed rule. The transcript of this meeting is also available for inspection and copying for a fee at the Commission's Public Document Room as described above. The comment letters and LSSARP meeting comments were generally supportive of the NRC's effort to update Part 2, Subpart J; however, several areas of concern were raised.

Definition of ''Documentary Material'' § 2.1001

Comment: One commenter requested that the phrase ''or is likely to lead to the discovery of relevant material,'' which is included in the current definition of ''documentary material'' be included in the new definition.

Response: NRC believes that the definition of documentary material, as adopted in this final rule, amply defines the body of material that will be important for and most usable for the licensing proceeding. The definition of documentary material, as amplified by the Topical Guidelines, is already very broad. The addition of the identified phrase to add a responsibility to identify and provide electronic access to material ''that could lead to the discovery of'' material relevant to the entire scope of topics in the licensing proceeding could be an apparently limitless task. Furthermore, this enlargement of the scope of documentary material might only serve to impede the usefulness of electronic access to the relevant material by cluttering the system with extraneous material. Finally, a motion by a party in regard to the omission of relevant material would be entertained by the Presiding Officer. This should be sufficient to ensure that truly relevant materials are made available to the participants. Therefore this comment has not been adopted in the final rule.

Comment: The DOE commented that NRC should remove from the definition of documentary material the clause:

> and all reports and studies prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and or cited by a party.

The DOE is concerned that this clause would capture reports and studies that are irrelevant to the license application, such as reports and studies made for other potential sites and for predecessor agencies.

Response: Although it seems implicit, the NRC is willing to clarify that this clause applies only to information that is relevant to the license application. To make this clear in the final rule, the phrase ''both the license application and'' has been inserted after the words ''relevant to'' in the phrase cited by DOE.

Comment: Participants in the LSSARP meeting raised the issue that the term being defined, ''documentary material,'' and the text of the proposed definition, both contain the word ''material,'' leading to some confusion about the intended meaning.

Response: The final rule has eliminated the words ''material or other'' from the proposed definition, leaving the definition to read: ''*Documentary material* means any information upon which a party, potential party * * *''

Name of System § 2.1001

Comment: Several commenters observed that it would be more convenient to continue to have a name, like the current Licensing Support System (LSS), to use to refer to the combined system to provide electronic access to documentary material in both the pre-license application phase and during the licensing proceeding, including the pre-license application electronic docket and the electronic docket. The participants in the LSSARP meeting generally agreed that ''Licensing Support Network (LSN)'' would be an appropriate name.

Response: The final rule has adopted the suggestion. Because the proposed rule had used the term *integrated electronic information* generally for this purpose, the final rule substitutes *Licensing Support Network* (LSN) for *integrated electronic information* and amends the definition accordingly to refer to the system, rather than the information.

Timing and Availability of Documentary Material and the Pre-License Application Phase §§ 2.1003, 2.1008, 2.1012(d).

Comment: Many of the participants at the LSSARP meeting observed that because the Licensing Support Network appears more likely to be a World Wide Web-based system, easily accessible by office and home personal computers, rather than a specially designed stand-alone system like the former LSS concept, there is little reason to continue the practice of limiting access to documentary material in the pre-license application phase to potential parties to the licensing proceeding. Instead, this information could be made available to any member of the public. The State of Nevada representative commented that it would be an uncomfortable position for the State, as a potential party, to have more access to information than its citizens. The DOE also points out an internal inconsistency in the proposed rule in that proposed § 2.1012(d), which states that the Pre-License Application Presiding Officer may suspend or terminate access to the pre-license application electronic docket for non-compliance, is not consistent with the public access in proposed § 2.1007(a), which says that DOE and NRC must maintain systems to provide electronic access to the integrated electronic information for the public.

Response: NRC agrees that under the final rule, information can be made available to all members of the public, even in the pre-license application phase. Practical considerations, including the operating capacities of the systems, may require that priority be given to potential parties, however these matters may be worked out in consultation with the Advisory Review Panel in the implementation of the final rule. Proposed § 2.1003(a) has been modified to delete the list of individuals to whom electronic information must be made available beginning in the pre-license application phase, because this information must be made generally available electronically. Proposed § 2.1008 purported to give electronic access to the integrated electronic information to persons who comply with the regulations in Part 2 Subpart J and with the orders of the Pre-license Application Presiding Officer. Therefore, proposed § 2.1008 has not been adopted because it is by implication not consistent with allowing public access to the electronic information and the pre-license application electronic docket. Proposed § 2.1012(d), which concerned suspending or terminating access, has not been adopted in the final rule, because, as noted by the DOE comment, it implies controlled and limited access, rather than open public access to documentary material and to the pre-license application electronic docket and to the electronic docket.

Comment: Definition of *pre-license application phase* and § 2.1003. The State of Nevada commented that the proposed rule's use of the date of the President's recommendation to Congress as the date when all potential parties and interested governmental participants must make documentary information available electronically had the appearance of a presumption that the State of Nevada's objection to the Yucca Mountain site decision would be overridden by Congress. This participant stated that it would be more reasonable to select the date of

Congress' resolution of any objection from the State of Nevada in order to be certain that this particular license application is going forward. Other LSSARP participants pointed out that the critical sets of documents that should be available as early as possible are those of the NRC and, particularly, the DOE. The LSSARP meeting discussion suggested that it would not matter if other potential parties did not make their documentary material available until a later time when the Yucca Mountain license application was a certainty. LSSARP meeting participants suggested that DOE and NRC be required to make their documentary material available at an earlier date. Because the DOE and NRC documentary material will constitute the overwhelming majority of the information to be made available in the LSN, it is important that it be accessible as soon as possible to allow preparation for the licensing proceeding. They suggested that other potential parties and interested governmental participants should be required to make their documentary material available electronically no later than the date that the site selection decision becomes final after review by Congress.

Response: NRC has adopted the suggestion developed at the LSSARP meeting, that NRC and DOE documents should be made available at the earliest practical time, and that all other participants' documents should be made available later. However, in order to allow time for compliance with dates that may be hard to predict in advance, the final rule allows 30 days after the selected milestones before requiring compliance. Therefore, the definition of *Pre-license application phase* has been revised to state that phase begins 30 days after the date on which DOE submits its site recommendation decision to the President, a date earlier than the date specified in the proposed rule. DOE's latest Program Plan, Civilian Radioactive Waste Management Program Plan, Rev. 2, DOE/RW–0504 (July 1998) has scheduled sending the Site Suitability Recommendation to the President in July 2001.

Section 2.1003(a) has been revised to require NRC and DOE to make their documentary material available beginning in the pre-license application phase. The final rule requires all other potential parties or interested governmental participants to make their documentary material available no later than 30 days after the date the repository site selection decision becomes final after review by Congress. Section 2.1003 has also been rearranged slightly from the proposed version in order to clarify and improve the parallel structure of the subsections.

Time Period for Inspection and Copying Documents §§ 2.1004, 2.1010(c)

Comment: The DOE commented that the two days allowed in both §§ 2.1004 and 2.1010(c) for making documents available for inspection and copying should be extended to ten working days, because reasonable and expeditious efforts to reproduce and make large documents available could easily consume two days. DOE points out that lengthening the time limit would also relieve the Presiding Officer of the burden of reviewing requests for minor extensions of these deadlines.

Response: NRC acknowledges that two days may be too brief a period of time to search for and reproduce some large documents. Nevertheless, ten working days is much more time than is needed, or can be spared routinely in the schedule for this licensing proceeding. Therefore, the deadlines in these two sections have been extended from two to five days.

Section 2.1007(a)(3) and (c) Access

Comment: The DOE notes that proposed § 2.1007(a)(3) retains the current requirement to make available systems to provide electronic access for members of the public at any NRC and DOE Local Public Document Rooms to be located in Nevada, with specified locations at Las Vegas, Reno, Carson City, Nye County, and Lincoln County. DOE requests that the rule be clarified to specify which of these locations are the responsibility of DOE and which are NRC's.

Response: The best options for providing the required public access to the LSN will need to be explored by DOE and NRC in consultation with the Advisory Review Panel in the implementation of the rule. The NRC position on maintaining Local Public Document Rooms will be changing because of the future planned availability of all agency documents via the Internet accessible from a personal computer from home, office, or a public library. NRC does not believe that it is necessary or practical to add further detail to this portion of the rule at this time.

Comment: The DOE states that § 2.1007(c) appears to require both NRC and DOE to treat docketed documents as agency documents under the Freedom of Information Act (FOIA). DOE finds the phrase ''if these documents remain under the custody and control of the agency or organization that identified the documents'' to be confusing. DOE proposes a clarification that all documents entered into the docket, other than those submitted by another agency, are NRC documents for FOIA purposes.

Response: NRC agrees that the text of § 2.1007(c) is confusing. Furthermore, that text appears to be unnecessary, because § 2.1007(b) states that the regulations of NRC and DOE regarding availability of copies apply to the respective agencies' records. Therefore, proposed § 2.1007(c) has not been adopted.

Certification of Compliance § 2.1009(b)

Comment: The DOE noted that the proposed rule replaces the six month interval for certifying that the procedural requirements have been met with an unspecified interval ''upon order of a duly appointed presiding officer.'' DOE suggests that a regular and prescribed interval for certification would facilitate the success of the system and proposes a twelve-month period as appropriate.

Response: NRC agrees that a regular interval for updating the certification may be beneficial. Therefore, the final rule adopts the suggestion of a twelve month interval for updating the certification of compliance. The DOE will also be required to update its certification at the time it submits its license application to the NRC.

Compliance § 2.1012

Comment: One commenter and participant in the LSSARP meeting stated that the Director of NRC's Office of Nuclear Materials Safety and Safeguards (NMSS) should have the responsibility and authority to reject the DOE license application, not only if it is not able to be accessed through the electronic docket but also, if the DOE is not in compliance with all of the requirements of the rule when the license application is submitted. This commenter suggested that the current language of § 2.1011(d)(6) and (7) be moved to § 2.1012.

Response: Section 2.1009(b) has been revised in response to the previously discussed comment to require an updated certification from the DOE at twelve month intervals and at the time of submission of the license application. This final rule also adds a clause to § 2.1012 to authorize the Director, NMSS, to find the license application unacceptable for docketing if it is not accompanied by a certification from DOE pursuant to § 2.1009(b).

Copies of Documents for Deposition § 2.1019(i)

Comment: The DOE observes that it may be burdensome to provide paper copies of large documents that are not identical (because of subsequent modification or added notations) to those documents that have been made available electronically, as required by proposed § 2.1019(i). DOE suggests that the requirement be clarified to require submission of copies only of the parts of the documents that have been modified.

Response: NRC believes that this suggestion might prove difficult to implement. It would seem especially difficult to isolate and identify changes from the previous documents if the subsequent modifications have been inserted electronically, thereby altering the pagination of the pre-existing text. Isolating the modified sections as separate documents could obscure the overall context and meaning of the changed portion. NRC has not adopted this suggestion.

Retention of the ''LSS Administrator'' Function § 2.1011

Comment: The consensus of the LSSARP meeting participants and three of the written comments supported retention of the LSS Administrator function. One comment asserted that the ''LSS Administrator'' was needed to contribute to the design and management of the system, to be a ''traffic cop'', to balance priorities for data input, to organize data, to resolve conflicts, to audit the system, and to add credibility. Another comment stated that the LSS Administrator should be retained and should review participants' readiness to allow access to their documentary material, receive and resolve complaints regarding network problems, perform periodic audits or compliance reviews, assist participants in achieving and maintaining compliance, and coordinate resolution of technical issues.

Response: The Commission agrees that the ''LSS Administrator'' function may be useful for the smooth functioning of the LSN to identify and help implement solutions to implementation problems. The final rule contains a new term in § 2.1001, LSN Administrator. Section 2.1011(c) provides for the designation of an LSN Administrator before the start of the pre-license application phase. The LSN Administrator will be responsible to coordinate the functioning of the Licensing Support Network by identifying technical and policy issues related to implementation of the LSN for Advisory Review Panel and NRC consideration. The LSN Administrator will coordinate addressing the consensus advice of the LSN Advisory Review Panel and resolving problems regarding LSN availability and the integrity of the LSN data. The LSN Administrator will also provide periodic reports to the NRC on the status of LSN functionality and operability.

Maintaining an Advisory Review Panel § 2.1011(c)

Comment: All those who submitted written comments and who commented at the LSSARP meeting preferred continuing to have an advisory review panel, rather than substituting an informal users group. The DOE stated that it was premature to replace the advisory review panel with an informal users group and that the formality of the panel would ensure that each member's concerns about the structure of the electronic docket will be addressed in a documented manner. Two commenters stated that a more informal group would tend to be less effective with higher turnover in participants and less commitment to the objectives of the program.

Response: The final rule requires the Secretary of the Commission to reconstitute the LSS Advisory Review Panel as the LSN Advisory Review Panel (LSNARP). In view of the many complex implementation issues that must be coordinated among the participants, the continued use of an advisory committee appears to offer the best means to ensure that these issues will be considered and resolved effectively. However, the NRC directs that LSNARP meetings be conducted with the most efficient possible use of resources. Meetings should be conducted taking advantage of teleconference, video conference, or other electronic communication capabilities to the greatest extent practicable. Because the current membership will be retained, proposed § 2.1011(d)(2) that specifies the initial membership of the Advisory Review Panel has not been adopted.

Membership on the LSNARP § 2.1011(c)(2)

Comment: Two commenters, who are affected units of local government, stated that the proposed rule should be modified to give a separate seat on the LSNARP to each affected unit of local government, rather than specifying one seat for ''a coalition of affected units of local government.'' One commenter stated that there are now 10 counties designated by DOE as ''affected'' and that the different interests of this group could not be represented by one seat. One commenter, Nye County, Nevada, stated that its status as the ''situs jurisdiction'' is significantly different from that of the other counties and requires separate representation. The National Congress of American Indians stated that individual affected tribes from the Yucca Mountain area should be members of the LSNARP.

Response: In order to keep the functioning of the LSNARP manageable, including numbers of participants required for quorums and other operating requirements, NRC believes that it is necessary to continue to treat entities with similar interests as coalitions (e.g., affected units of local government, tribal groups). However, this does not need to affect recognition of the unique status of individual members of the coalition, nor their opportunity to attend and participate at LSN meetings.

Funding for Participants in the LSN

Comment: Several participants at the LSSARP meeting stated that there was an urgent need for funding to enable small entities to participate fully in the HLW licensing proceeding and the LSNARP, and to fulfill their responsibilities to provide electronic access to documentary material under this rule.

Response: The LSSARP participants did not suggest and NRC has not devised any revisions to the rule to address this problem. As noted at the LSSARP meeting, NRC is prohibited from paying expenses for participants in licensing proceedings by a provision from the Fiscal Year 1993 Energy and Water Development Appropriations Act, which has been codified at 5 U.S.C. 504 note. A Comptroller General's opinion issued December 3, 1980, Opinion No. B–200585, interpreting identical language previously contained in the Energy and Water Development Appropriation Act, 1981 (Pub. Law 96–367, 94 Stat. 1331), concluded that NRC could not provide to intervenors free copies of transcripts or free copying and service of intervenors' documents. Therefore, although the supplementary information of the proposed rule notice suggested that there might be an option for participants to provide their documentary materials to NRC or DOE to allow NRC or DOE to maintain electronic availability of the participants' documents, NRC has concluded that this action may not be permissible under the statutory prohibition.

NRC recognizes that this revised rule places responsibility for document conversion, loading, and maintaining

and operating a web server on each of the individual parties or potential parties. NRC believes there is an approach to help the smaller parties and potential parties mitigate the funding requirements of participation under this rule. Affected units of local government (AULG) and other parties and potential parties could utilize a portion of grant funds typically provided to the AULG by DOE in the past. Although in FY 1997 no grants were forthcoming from DOE and many of the county governments had to cancel or severely curtail their activities for the year, funding was available in FY 1998 and should be available in FY 1999.

Tribal Government Participation—Definition of ''Party'' and § 2.715

Comment: The National Congress of American Indians (NCAI) stated that NRC should set up a process to determine which tribes are interested in representation in the licensing proceeding to ensure that all interested federally recognized tribes are included as parties to the licensing proceeding. The NCAI also expressed a concern that tribal governments do not appear to be included in the provisions of § 2.715 which allow representatives of State or local governments to participate in a proceeding without being required to take a position on the issues. NCAI recognizes that this matter may not be within the purview of this rulemaking but requests that it be addressed in the appropriate forum.

Response: The definition of ''party'' includes ''affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982.'' If a tribe which did not meet that definition wished to participate as a party, it would still be able to seek intervention under § 2.1014.

With regard to § 2.715, because this issue is outside the scope of the current rulemaking, the NRC intends to undertake a separate rulemaking to amend that section to include federally recognized Native American tribal governments. This task has been added to the NRC's Rulemaking Activity Plan (SECY 98–168). However, the straightforward and procedural nature of such a rule change should make it possible to proceed without undue delay.

Additional Matters Regarding ''Documentary Material'' and Electronic Availability § 2.1003

The definition of ''documentary material'' has been amended to make clear that the duty to identify ''information that is relevant to, but does not support, that information or that party's position'' is limited to information ''that is known to, and in the possession of, or developed by the party.''

The NRC staff has become aware through informal discussions with commenters on this rulemaking that the proposed rule language did not clearly retain the requirement for an electronic bibliographic header to be made available with each item of documentary material made available under § 2.1003. An electronic bibliographic header is necessary to allow effective and efficient use of an electronic full text search capability. Therefore, § 2.1003(a)(1) has been amended to clarify the requirement to submit an electronic bibliographic header along with each item of documentary material.

III. Section-by-Section Description of Final Rule

In § 2.1000, the reference to § 2.709 is removed because it requires compliance with § 2.708 which does not apply to this subpart.

In § 2.1001, the following definitions are added, amended, or removed:

ASCII File. This definition is removed and no longer used in the rule. Prescriptive references to specific technical standards have been removed to allow flexible implementation consistent with developing technology.

Documentary material. The definition of documentary material is revised to cover information upon which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the licensing proceeding; any information known to, and in the possession of, or developed by the party which is relevant to, but does not support, that information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. This definition is used in the rule in § 2.1003 to define what material must be provided in electronic form for access beginning in the pre-license application phase. Therefore, the term ''documentary material'' is intended to describe the most important body of material and would be defined clearly to require that all parties include electronic access to any relevant information in their possession that does not support their position in the licensing proceeding, as well as providing access to the information that does support their position, and any reports and studies prepared by the party relevant to the application on issues described in the Topical Guidelines, regardless of whether or not they would be relied upon or cited by the party. The scope of the documentary material is still governed by the topical guidelines.

Electronic docket. A new definition is added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC adjudicatory docket materials in the licensing proceeding.

Licensing Support Network (LSN). A new definition would be added to describe the combined system to make documentary material and the NRC pre-license application docket and licensing docket available in electronic form to potential parties, parties, interested governmental participants, or the public for the licensing proceeding of the high-level waste geologic repository, either as part of the NRC's pre-license application electronic docket or electronic docket or pursuant to electronic access to documentary material made available by individual potential parties, parties, and interested governmental participants. This is a term that replaces the LSS in this rule.

LSS Administrator. This term is eliminated from the rule because the concept of the LSS is also removed. The Pre-license Application Presiding Officer will resolve disputes about electronic access to documents in the pre-license application phase. This rule creates a new term ''LSN Administrator'' which is described below.

LSN Administrator. This new term describes the individual who will coordinate access to, and the functioning of, the Licensing Support Network, as well as the resolution of problems regarding the functionality and availability of the system.

Party. This definition is revised to add ''affected unit of local government'', as that term is defined in the Nuclear Waste Policy Act of 1982, as amended, and also to refer to that statute for the definition of affected Indian Tribe. In addition, any affected unit of local government, the host State, and any affected Indian Tribe would be required to file a list of contentions.

Potential party. This definition is revised to remove the reference to the LSS and to substitute the term *Licensing Support Network* to describe the material to which the potential party will be given access.

Pre-license application electronic docket. A new definition is added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase. This definition is being specified for the purposes of this rule to begin 30 days after the date the DOE submits its site suitability decision to the President. This term is used in § 2.1003 to specify the date by which the DOE and the NRC must make their documentary material available electronically. This date has been chosen to allow access to the largest body of the most important NRC and DOE documentary material sufficiently in advance of the filing of the license application to allow advance preparation of contentions and discovery requests before the application is filed but late enough in the repository development process to provide meaningful information.

Searchable full text. This definition is revised to remove references to ASCII and to the LSS.

Topical Guidelines. A new definition is added to describe the set of topics set forth in Regulatory Guide 3.69 that are intended to guide the scope of documentary material under this subpart.

Section 2.1002 is removed because creation of the LSS is no longer required. Access to the Licensing Support Network will provide the major functions which the LSS was designed to provide. Paragraphs (c) and (d), which state that participation by the host State in the pre-application phase will not affect its disapproval rights and that this subpart shall not affect any participant's independent right to receive information, are now incorporated in the revised § 2.1003 as paragraphs (c) and (d).

Section 2.1003 is revised to describe information that is required to be made available electronically by all potential parties, parties, and interested governmental participants (including the NRC and DOE). This information must be made electronically available by NRC and DOE beginning in the pre-license application phase, which starts 30 days after the date the DOE submits its site recommendation to the President. Other potential parties and interested governmental participants would be required to make their documentary material available no later than 30 days after the date the repository site selection decision becomes final after review by Congress. The requirements of the rule are simplified to require only that access to an electronic file and bibliographic header be provided. All references to specific formats are removed to allow flexibility in implementation.

Although the rule sets deadlines for requiring all potential parties and interested governmental participants to make their documentary material available electronically, the NRC would encourage the earliest feasible availability of documentary material in order to enhance the future smooth operation of the licensing proceeding. The paragraphs relating to evaluations and certifications by the LSS Administrator are removed because the LSS (and LSSA) concept is removed. Section 2.1010 states that the Pre-License Application Presiding Officer will resolve any disputes relating to electronic access to documents in the pre-license application phase. Accordingly, the paragraphs which stated that the application would have to be docketed under Subpart G if the LSSA did not certify compliance have been removed. Subpart J (including specifically referenced sections of Subpart G) unconditionally presents the rules of procedure applicable for the HLW licensing proceeding.

Section 2.1004 is revised to provide procedures for providing access to a document that has not previously been provided in electronic form, to delete previous references to the LSS and the LSSA, and to extend the period of time for providing access to a document from two days to five days.

Section 2.1005 is revised to delete reference to the LSS and to add an exclusion of readily available references, such as journal articles or proceedings, which may be subject to copyright.

Section 2.1006 is revised to refer to providing a document in electronic form and to delete references to the LSS and the LSSA.

Section 2.1007 is revised to refer to providing systems for access to the Licensing Support Network rather than providing terminals for access to the LSS. Paragraph (c) is deleted because the text was confusing and not needed.

Section 2.1008 is removed and reserved. The requirements for petitioning for access during the pre-license application phase are not consistent with allowing public access to the electronic information.

Section 2.1009 is revised to delete references to the LSS and the LSSA, and to refer instead to the responsibility to provide electronic files. The responsible official for each potential party is required to certify to the Pre-License Presiding Officer that procedures to comply with § 2.1003 have been implemented and that its documentary material has been made electronically available. A requirement for all participants to update the certification at twelve month intervals and for DOE to update its certification at the time of submission of the license application replaces a previous requirement to provide this certification at six month intervals.

Section 2.1010 is revised to delete references to the LSS and the LSSA and to refer instead to electronic access. The reference to petitions for access is removed to conform to removal of this requirement. The time period for providing access to documents is extended from two days to five days.

Section 2.1011 is revised to reflect that the electronic availability of documentary material that is specified in this rule no longer requires special equipment. The Secretary of the Commission is directed to reconstitute the LSS Advisory Review Panel as the LSN Advisory Review Panel. The functions of the panel have been amended to delete the reference to the LSS and to substitute the purpose of arriving at standards and procedures to facilitate the electronic access to documentary material and to the electronic docket established for the HLW geologic repository licensing proceeding. Because of the broad and non-prescriptive requirements regarding providing electronic files in this rule, the LSN Advisory Review Panel will be very useful in discussing standards and procedures to ensure that all participants are able to access the electronic information. Because the LSS concept is replaced, the name and functions of the LSS Administrator have been changed to ''LSN Administrator'' and to include coordinating the functions of the Licensing Support Network. The LSN Administrator will be responsible for identifying technical and policy issues related to implementation of the LSN for LSSARP and NRC consideration, addressing the consensus advice of the LSN Advisory Review Panel, and for coordinating the resolution of problems experienced by participants regarding LSN availability and the integrity of the LSN data. The LSN Administrator will also provide periodic reports to the NRC on the status of LSN functionality and operability. Similarly, the name and functions of the LSS Advisory Review Panel have been modified in the final rule to accommodate a new purpose.

Section 2.1012(a) is revised to allow the Director of the NRC Office of Nuclear Material Safety and Safeguards (NMSS) to determine that the application would not be acceptable if

it is not able to be accessed through the electronic docket or if it is not accompanied by a certification of compliance with the rule pursuant to § 2.1009(b). Section 2.1012(b)(1) is revised to substitute *Licensing Support Network* for *Licensing Support System* so that a person who has had access to the Licensing Support Network would not be granted party status in the licensing proceeding if it cannot demonstrate compliance with the requirements of § 2.1003. Section 2.1012 (d) has been removed because the provision for suspending or terminating access to the pre-license application electronic docket or the electronic docket is inconsistent with allowing public access to the LSN.

Section 2.1013 is revised to delete references to the LSS and LSSA and refers to the provision of information in electronic form. The requirement in § 2.1013(c)(5) to file one signed paper copy of each filing with the Secretary, NRC, is removed because the electronic docket will not require signed paper copies. However, use of the electronic docket will require the development of electronic signature procedures, which will be devised in the implementation of the rule.

Section 2.1014(c)(4) has been revised to delete a reference to the LSS and make the failure of a petitioner to participate in the pre-license application phase a criterion in considering whether to grant a petition to intervene.

Section 2.1017 has been revised to use the unavailability of the electronic docket instead of the LSS as a justification for extending the computation of time in the proceeding.

Sections 2.1018 and 2.1019 are revised to delete references to the LSS and instead to refer to providing documents electronically.

In addition, minor editorial changes have been made throughout the final rule to improve readability.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Regulatory Analysis

To address the regulatory problem of adapting the existing rule to technological developments that have occurred, several alternative approaches to amending the regulations in Subpart J of Part 2 were considered.

Option 1: Existing Rule

This approach would not take advantage of current and future technology. It would require an enormously expensive custom designed system to be developed using old assumptions about technological standards and the universe of ''relevant'' material. At the time of the development of the existing rule, the cost of the LSS was estimated by DOE to be in the $200 million range. Furthermore, because the large backlog contains many documents that may no longer be relevant due to the unanticipated delay in developing the LSS as initially designed in 1988, there is a substantial chance that it would be impossible for the DOE to achieve and for the LSSA to certify compliance with the provisions of the current rule. In this case, under the current rules, the proceeding would have to be conducted under 10 CFR Part 2, Subpart G, and could result in a protracted discovery phase. The additional costs of using this approach are difficult to quantify. However, the lengthened discovery phase could prevent the NRC from meeting the statutory deadline for decision on the application for a geologic repository license.

Option 2: 10 CFR Part 2, Subpart G

Because the NRC is developing a new system called the Agency-wide Documents Access and Management System (ADAMS), that will provide an agency-wide electronic docket, it would be possible to rely on existing adjudicatory procedure rules in 10 CFR Part 2, Subpart G, which will have to be updated to reflect the electronic docket to conduct the licensing proceeding. This approach would not provide pre-license application access to documents and could result in a protracted discovery phase. The costs of using this approach are difficult to quantify. However, the lengthened discovery phase could prevent the NRC from meeting the statutory deadline for decision on the application.

Option 3: Existing Rule Using a Distributed System

This approach would allow using linked individual Internet sites to serve as the LSS. However, this approach does not solve the problem discussed in Option 1 concerning the requirement to capture a huge backlog of material that may not have been maintained in a manner that would ever permit compliance with the rule and may not all be relevant to the future license application. Therefore, the costs of this approach, as in Option 1, would include the possibility that the LSS rule compliance finding could not be made and the proceeding would have to be conducted under 10 CFR Part 2, Subpart G. A lengthened discovery phase could prevent the NRC from meeting the statutory deadline for decision on the application.

Option 4: Revised Rule With More Realistic Document Discovery Approach

This approach will remove the requirement for a central LSS system and LSS Administrator, but will require each potential party to provide for the electronic availability of both the material it intends to rely upon to support its position, any material which does not support that material or that position, and any reports or studies prepared by or for the party, beginning in the pre-application phase (presided over by a Pre-License Application Presiding Officer). This definition of documentary material will provide pre-application access to a more focused set of the materials most important to the licensing proceeding. It will not require electronic access to the entire backlog of DOE and other parties' material, some of which may no longer be relevant to the licensing proceeding. The electronic docket functionality of the LSS will be provided by the NRC agency-wide system with supervision of the Presiding Officer. Participation in the pre-license application phase will be one criterion for participating in the hearing. After the application is filed, in addition to the electronically available material, discovery will be limited to interrogatories and depositions as in the current rule. The specific method of providing electronic access to documentary material will not be specified, which will allow flexibility to accommodate current and future technology advances. Because this rule will unconditionally provide the procedural rules for document management for the HLW licensing proceeding, there would be no last minute danger that discovery would have to be conducted under 10 CFR Part 2, Subpart G.

The NRC believes that Option 4 provides the most effective solution for maintaining the basic functionality of the LSS conceptual design and accommodates current and future technological developments. This

constitutes the final regulatory analysis for this rule.

Regulatory Flexibility Certification

The amendments will modify the NRC's rules of practice and procedures. The rule is amended to allow more widely available electronic access to information before the license application is filed. Participants will be required to make their own documentary material available electronically. This final rule will not have a significant economic impact upon a substantial number of small entities. The license applicant for the HLW repository will be the Department of Energy. DOE does not fall within the definition of a ''small entity'' in the NRC's size standards (10 CFR 2.810). Although a few of the intervenors in the HLW proceeding would likely qualify as small entities, the impact on intervenors or potential intervenors will not be significant. The requirement for participants to make their own documentary material available electronically is stated in a manner that will allow flexibility in implementation. Furthermore, it is consistent with current business practice to create documents electronically. Although the exact additional costs to small entities involved in making the documentary materials available electronically are difficult to quantify, to avoid those costs, participants may have the option of utilizing funds provided by DOE to affected units of local government. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this final rule will not have a significant economic impact upon a substantial number of small entities.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would require backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 10 CFR Part 2

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

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954; as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Nuclear Regulatory Commission is adopting the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. l6l, l8l, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

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

2. Section 2.1000 is revised to read as follows:

§ 2.1000 Scope of subpart.

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.105(a)(5). The procedures in this subpart take precedence over the 10 CFR Part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

3. Section 2.1001 is amended by removing the definitions of *ASCII File* and *LSS Administrator*; adding definitions of *Electronic docket, Licensing Support Network, LSN Administrator, Pre-license application electronic docket,* and *Topical Guidelines*; and revising the definitions of *Documentary material, Party, Potential party, Pre-license application phase,* and *Searchable full text,* to read as follows:

§ 2.1001 Definitions.

* * * * *

Documentary material means (1) any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; (2) any information that is known to, and in the possession of, or developed by the party that is relevant to, but does not support, that information or that party's position; and (3) all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to both the license application and the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

Electronic docket means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

* * * * *

Licensing Support Network means the combined system that makes

documentary material available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

LSN Administrator means the person within the U.S. Nuclear Regulatory Commission responsible for coordinating access to and the integrity of data available on the Licensing Support Network. The LSN Administrator shall not be in any organizational unit that either represents the U.S. Nuclear Regulatory Commission staff as a party to the high-level waste repository licensing proceeding or is a part of the management chain reporting to the Director, Office of Nuclear Material Safety and Safeguards. For the purposes of this subpart, the organizational unit within the NRC selected to be the LSN Administrator shall not be considered to be a party to the proceeding.

* * * * *

Party for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under § 2.1014 to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; provided that a host State, affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§ 2.1014(a)(2) (ii) and (iii).

* * * * *

Potential party means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d), is given access to the Licensing Support Network and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

Pre-license application electronic docket means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

Pre-license application phase means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3). For the purpose of this subpart, this period begins 30 days after the date the DOE submits the site recommendation to the President pursuant to section 114(a) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10134(a)).

* * * * *

Searchable full text means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

Topical Guidelines means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to serve as guidance on the scope of ''documentary material''.

§ 2.1002 [Removed]

4. Section 2.1002 is removed and reserved.

5. Section 2.1003 is revised to read as follows:

§ 2.1003 Availability of material.

(a) Subject to the exclusions in § 2.1005 and paragraphs (b) and (c) of this section, NRC and DOE shall make available, beginning in the pre-license application phase, and each other potential party, interested governmental participant or party shall make available no later than 30 days after the date the repository site selection decision becomes final after review by Congress—

(1) An electronic file including bibliographic header for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party. Concurrent with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.

(2) In electronic image form, subject to the claims of privilege in § 2.1006, graphic-oriented documentary material that includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or hand written. Text embedded within these documents need not be separately entered in searchable full text. Graphic-oriented documents may include—

(i) Calibration procedures, logs, guidelines, data and discrepancies;

(ii) Gauge, meter and computer settings;

(iii) Probe locations;

(iv) Logging intervals and rates;

(v) Data logs in whatever form captured;

(vi) Text data sheets;

(vii) Equations and sampling rates;

(viii) Sensor data and procedures;

(ix) Data Descriptions;

(x) Field and laboratory notebooks;

(xi) Analog computer, meter or other device print-outs;

(xii) Digital computer print-outs;

(xiii) Photographs;

(xiv) Graphs, plots, strip charts, sketches;

(xv) Descriptive material related to the information identified in paragraph (b)(1) of this section.

(3) In an electronic file, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for image or searchable full text.

(4) An electronic bibliographic header for each documentary material—

(i) For which a claim of privilege is asserted;

(ii) Which constitutes confidential financial or commercial information; or

(iii) Which constitutes safeguards information under § 73.21 of this chapter.

(b) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC, such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be made available in electronic form by the respective agency that generated the document.

(c) The participation of the host State in the pre-license application phase shall not affect the State's ability to exercise its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(d) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

6. Section 2.1004 is revised to read as follows:

§ 2.1004 Amendments and additions.

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental participant, or party responsible for the submission of the document within five days after it

has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding. The time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

7. Section 2.1005 is revised to read as follows:

§ 2.1005 Exclusions.

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)—

(a) Official notice materials;

(b) Reference books and text books;

(c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Junk mail;

(f) References cited in contractor reports that are readily available;

(g) Classified material subject to subpart I of this part;

(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

8. Section 2.1006 is revised to read as follows:

§ 2.1006 Privilege.

(a) Subject to the requirements in § 2.1003(c), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 may be asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The other participants; or

(2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

9. Section 2.1007 is revised to read as follows:

§ 2.1007 Access.

(a)(1) A system to provide electronic access to the Licensing Support Network shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the Licensing Support Network shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices beginning in the pre-license application phase.

(3) The systems for electronic access specified in paragraphs (a)(1) and (a)(2) of this section shall include locations at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(b) Public availability of paper and electronic copies of the records of NRC and DOE, as well as duplication fees, and fee waiver for those records, is governed by the regulations of the respective agencies.

10. Section 2.1008 is removed and reserved:

§ 2.1008 [Removed]

11. Section 2.1009 is revised to read as follows:

§ 2.1009 Procedures.

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(d).

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. The responsible official shall update this certification at twelve month intervals. The responsible official for the DOE shall also update this certification at the time of submission of the license application.

12. Section 2.1010 is revised to read as follows:

§ 2.1010 Pre-License Application Presiding Officer.

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter to serve as the Pre-License Application Presiding Officer to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(d).

(2) The Pre-License Application Presiding Officer shall be designated before the Licensing Support Network is scheduled to be available.

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

(3) Whether the material is privileged or otherwise excepted from disclosure under § 2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from

disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from production under § 2.1005, the potential party, interested governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within five days.

(d) The service of all pleadings and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in § 2.1013(c) and entered into the pre-license application electronic docket.

(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(c) and 2.718.

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

13. Section 2.1011 is revised to read as follows:

§ 2.1011 Management of electronic information.

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b) The NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(c) The Licensing Support Network shall be coordinated by the LSN Administrator, who shall be designated before the start of the pre-license application phase. The LSN Administrator shall have the responsibility to—

(1) Identify technical and policy issues related to implementation of the LSN for LSN Advisory Review Panel and Commission consideration;

(2) Address the consensus advice of the LSN Advisory Review Panel under paragraph (e)(1) of this section that is consistent with the requirements of this subpart;

(3) Coordinate the resolution of problems experienced by participants regarding LSN availability, including the availability of individual participants' data;

(4) Coordinate the resolution of problems regarding the integrity of the documentary material certified in accordance with § 2.1009(b) by the participants to be in the LSN; and

(5) Provide periodic reports to the Commission on the status of LSN functionality and operability.

(d) The Secretary of the Commission shall reconstitute the LSS Advisory Review Panel as the LSN Advisory Review Panel, composed of the interests currently represented on the LSS Advisory Review Panel. The Secretary of the Commission shall have the authority to appoint additional representatives to the LSN Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC HLW Licensing Support System Advisory Review Panel.

(e)(1) The LSN Advisory Review Panel shall provide advice to—

(i) NRC on the fundamental issues of the type of computer system necessary to access the Licensing Support Network effectively under paragraph (b) of this section; and

(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket established for the HLW geologic repository licensing proceeding under the Commission's Rules of Practice (10 CFR part 2).

(iii) The LSN Administrator on solutions to improve the functioning of the LSN;

(2) The responsibilities of the LSN Advisory Review Panel shall include advice on—

(i) Format standards for providing electronic access to the documentary material certified by each participant to be made available in the LSN to the other parties, interested governmental participants, or potential parties;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

14. In § 2.1012, paragraphs (a) and (b)(1) are revised to read as follows, and paragraph (d) is removed:

§ 2.1012 Compliance.

(a) In addition to the requirements of § 2.101(f), the Director of the NRC's Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under this subpart if the Secretary of the Commission determines that it cannot be effectively accessed through the Commission's electronic docket system or if the application is not accompanied by an updated certification pursuant to § 2.1009(b).

(b)(1) A person, including a potential party given access to the Licensing Support Network under this subpart, shall not be granted party status under § 2.1014, or status as an interested governmental participant under § 2.715(c), if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation in the high-level waste licensing proceeding under § 2.1014 or § 2.715(c).

* * * * *

15. Section 2.1013 is revised to read as follows:

§ 2.1013 Use of the electronic docket during the proceeding.

(a)(1) Pursuant to § 2.702, the Secretary of the Commission will maintain the official docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the docketing in an electronic form of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to

part 60 of this chapter, the Secretary of the Commission, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or, for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket will contain a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts will be entered into the electronic docket on a daily basis in order to provide next-day availability at the hearing.

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, parties, and the Secretary of the Commission, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is completed when the sender receives electronic acknowledgment (''delivery receipt'') that the electronic submission has been placed in the recipient's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

(i) Electronic acknowledgment (''delivery receipt'');

(ii) The affidavit of the person making the service; or

(iii) The certificate of counsel.

(5) All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties and interested governmental participants.

(d) Online access to the electronic docket, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and interested governmental participants, and the witnesses while testifying, for use during the hearing. Use of paper copy and other images will also be permitted at the hearing.

16. In § 2.1014, paragraph (c)(4) is revised to read as follows:

§ 2.1014 Intervention.

* * * * *

(c) * * *

(4) The failure of the petitioner to participate as a potential party in the pre-license application phase.

* * * * *

17. Section 2.1017 is revised to read as follows:

§ 2.1017 Computation of time.

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

18. In § 2.1018, paragraph (a)(1) and the introductory text of paragraph (e) are revised to read as follows:

§ 2.1018 Discovery.

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods:

(i) Access to the documentary material made available pursuant to § 2.1003;

(ii) Entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020;

(iii) Access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003(a);

(iv) Depositions upon oral examination pursuant to § 2.1019;

(v) Requests for admission pursuant to § 2.742;

(vi) Informal requests for information not made electronically available, such as the names of witnesses and the subjects they plan to address; and

(vii) Interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

* * * * *

(e) A party, potential party, or interested governmental participant who has made available in electronic form all material relevant to any discovery request or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement its response to include information thereafter acquired, except as follows:

* * * * *

19. In § 2.1019, paragraphs (d), (e), and (i) are revised to read as follows:

§ 2.1019 Depositions.

* * * * *

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2), the party or interested governmental participant taking the deposition shall electronically serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted in electronic form to the Secretary of the Commission for entry into the electronic docket as in the case of a deposition on oral examination.

* * * * *

(i)(1) After receiving written notice of the deposition under paragraph (a) or

paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically, whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of § 2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section—

(i) Personal records;

(ii) Travel vouchers;

(iii) Speeches;

(iv) Preliminary drafts;

(v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

* * * * *

Dated at Rockville, Maryland, this 22nd day of December, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–34436 Filed 12–29–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–40–AD; Amendment 39–10969; AD 99–01–02]

RIN 2120–AA64

Airworthiness Directives; Westland Helicopters Ltd. 30 Series 100 and 100–60 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Westland Helicopters Ltd. (Westland) 30 Series 100 and 100–60 helicopters. This action requires the removal and replacement of conformal pinion quill shafts installed in certain main rotor gearboxes that fail to pass a magnetic drain plug inspection. This amendment is prompted by a report of a forced landing that occurred when a single conformal pinion quill shaft failed in a main rotor gearbox (MRGB). This condition, if not corrected, could result in the failure of a MRGB, and a subsequent forced landing or loss of control of the helicopter.

DATES: Effective January 14, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97-SW–40, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Westland Helicopters Ltd., Customer Support Division, Yeovil, Somerset BA20 2YB, England, telephone (01935) 703884, fax (01935) 703905. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0111, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), notified the FAA that an unsafe condition may exist on Westland 30 series helicopters. The UK CAA advised that an incident of a conformal pinion quill shaft failure within an MRGB occurred, resulting in a forced landing. Further investigation revealed that this MRGB had a history of shock loading, defined as a slam engagement of the No. 1 engine free wheeling unit that can occur when the No. 1 engine condition lever is at ''GND'' or ''FLT'' position and the engine is driving accessories but the main rotor is not turning. If the No. 1 engine free wheel is slam engaged, the No. 1 engine power turbine will abruptly stop, causing potential damage to the MRGB and other drive system components. Westland has issued Westland Helicopters Ltd. Service Bulletin W30–63–75, dated November 29, 1995 (SB), that requires the removal and replacement of the conformal pinion quill shafts within a MRGB identified by serial number or with a history of shock loading. The UK CAA classified this SB as mandatory and issued UK CAA AD 012–11–95, dated January 31, 1996, to ensure the continued airworthiness of these helicopters in the UK.

These helicopter models are manufactured in Yeovil, England, and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the UK CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the UK CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

This AD is being issued to prevent a forced landing or possible loss of control of the helicopter due to failure of the conformal pinion quill shafts installed in the MRGB in certain Westland 30 series helicopters. This AD requires, prior to further flight, a magnetic drain plug inspection of an installed MRGB with a serial number listed in this AD or with a history of shock loading. If the magnetic drain plug passes inspection, the MRGB may

remain in service a maximum of 100 additional hours time-in-service (TIS) after the effective date of this AD. If the magnetic drain plug fails inspection, the MRGB must be removed from service prior to further flight and the conformal pinion quill shaft has to be replaced with an airworthy conformal pinion shaft in accordance with the Westland Maintenance Manual.

None of the Westland 30 series helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately 1.5 work hours to inspect the magnetic drain plug and 20 work hours to replace, if necessary, the MRGB. The average labor rate is $60 per work hour. A replacement MRGB, if needed, costs $350,000. Based on these figures, the cost impact of this AD would be $350,090 per helicopter; $90 for the inspection and $350,000 for the replacement, if necessary, of the MRGB.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–40–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation and therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–01–02 Westland Helicopters Ltd (Westland): Amendment 39–10969. Docket No. 97–SW–40–AD.

Applicability: Westland 30 Series 100 and 100–60 Helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any rotorcraft from the applicability of this AD.

Compliance: Required as indicated unless accomplished previously.

To prevent failure of the conformal pinion quill shafts installed in certain Westland 30 series helicopters main rotor gearboxes that could result in a subsequent forced landing or loss of control of the helicopter, accomplish the following:

(a) Prior to further flight, determine if the installed main rotor gearbox (MRGB) has a serial number included in the following list or has a history of shock loading. Shock loading is defined as a slam engagement of the No. 1 engine free wheeling unit that can occur when the No. 1 engine condition lever is at ''GND'' or ''FLT'' position and the engine is driving accessories but the main rotor is not turning. If the No. 1 engine freewheel is then engaged, the No. 1 engine power turbine will abruptly stop, causing potential damage to the MRGB and other drive system components.

AAT 4440	ABL 5602	ACD 2875
AAX 4726	ABN 8930	ACN 7996
ABC 9438	ABP 3947	ADE 6100
ABD 7294	ABP 9028	WAG 397
ABG 5056	ABT 3965	WAG 410
ABH 5075	ABW 0547	WAK 525
ABJ 9595	ACA 3707	WAK 561
ABK 9484	.....	

(b) If the installed MRGB has a serial number listed in paragraph (a) of this AD or has a history of shock loading, perform a magnetic drain plug inspection.

(1) If the magnetic drain plug passes inspection, the MRGB may remain in service a maximum of 100 additional hours time in service (TIS) after the effective date of this AD with a repetitive magnetic drain plug inspection at intervals not to exceed 25 hours TIS. The MRGB must then be removed from service and the conformal pinion quill shafts replaced.

(2) If the magnetic drain plug fails inspection, remove the MRGB from service prior to further flight and replace the conformal pinion quill shafts.

Note 2: Westland Helicopters, Ltd. Service Bulletin No. W30–63–75, dated November 29, 1995 (SB) pertains to the subject of this AD.

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

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

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

(f) This amendment becomes effective on January 14, 1999.

Note 4: The subject of this AD is addressed in Civil Aviation Authority (United Kingdom) AD 012–11–95.

Issued in Fort Worth, Texas, on December 21, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–34502 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 97N–0239]

Dental Devices; Effective Date of Requirement for Premarket Approval; Temporomandibular Joint Prostheses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for certain devices, namely, the total temporomandibular joint (TMJ) prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis (for permanent reconstruction), and the interarticular disc prosthesis. At a later date, FDA will propose reclassifying from class III into class II the generic type of temporary mandibular condyle prosthesis intended for temporary reconstruction following surgical ablation of malignant and benign tumors. This action establishing the effective date of the premarket approval requirement for certain devices is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the FDA Modernization Act of 1997 (FDAMA).

DATES: This regulation is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mary S. Runner, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283.

SUPPLEMENTARY INFORMATION:

I. Background

A. Regulatory History of the Devices

In the **Federal Register** of December 20, 1994 (59 FR 65475), FDA issued a final rule classifying the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis, and the interarticular disc prosthesis (interpositional implant) into class III. The preamble to the proposal (57 FR 43165, September 18, 1992) to classify these devices included the recommendation of the Dental Products Panel of the Medical Devices Advisory Committee (the Panel), an FDA advisory committee, which met on April 21, 1989, regarding the classification of the devices, in particular, the total TMJ prosthesis and the interarticular disc prosthesis (interpositional implant). The preamble to the reproposed rule (59 FR 6935, February 14, 1994) to classify the glenoid fossa prosthesis and the mandibular condyle prosthesis included the recommendation of the Panel that reconvened on February 11, 1993, regarding the classification of these two devices. The Panel recommended, at the April 1989 meeting, that the total TMJ prosthesis and the interarticular disc prosthesis (interpositional implant) be classified into class III, and at the February 1993 meeting, the Panel recommended that the glenoid fossa prosthesis and the mandibular condyle prosthesis also be classified into class III, and identified certain risks to health presented by the devices. The Panel believed that the devices presented a potential unreasonable risk to health and that insufficient information existed to determine that general controls would provide reasonable assurance of the safety and effectiveness of the device or to establish performance standards which would provide reasonable assurance of the safety and effectiveness of the devices. FDA agreed with the Panel's recommendations and, in the September 18, 1992, proposal (57 FR 43165), and the February 14, 1994, reproposal (59 FR 6935), proposed that the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis and the interarticular disc prosthesis (interpositional implant) be classified into class III. The proposal and reproposal stated that FDA believed that general controls, either alone or in combination with the special controls applicable to class II devices are insufficient to provide reasonable assurance of the safety and effectiveness of the devices. The proposal and reproposal stated that premarket approval is necessary for the devices because the devices present potential unreasonable risks of illness or injury if there are not adequate data to ensure the safe and effective use of the devices. The preamble to the December 20, 1994, final rule (59 FR 65475) classifying the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis and the interarticular disc prosthesis (interpositional implant) into class III advised that the earliest date by which PMA's or notices of completion of PDP's for the devices could be required was June 30, 1997, or 90 days after issuance of a rule requiring premarket approval for the devices.

In the **Federal Register** of January 6, 1989 (54 FR 550), FDA issued a notice of intent to initiate proceedings to require premarket approval for 31 class III preamendments devices. Among other items, the notice described the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act (21 U.S.C. 360e(b)) for issuing final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. FDA updated its priorities in a preamendments class III strategy document made public through a **Federal Register** notice of availability published on May 6, 1994 (59 FR 23731). Though the above TMJ

prostheses were not included in the lists of devices identified in the notice and the strategy paper, using the factors set forth in these documents, FDA has determined that the total TMJ prosthesis identified in § 872.3940 (21 CFR 872.3940), the glenoid fossa prosthesis identified in § 872.3950 (21 CFR 872.3950), the mandibular condyle prosthesis identified in § 872.3960 (21 CFR 872.3960), and the interarticular disc prosthesis identified in § 872.3970 (21 CFR 872.3970) have a high priority for initiating a proceeding to require premarket approval because the safety and effectiveness of these devices has not been established by valid scientific evidence as defined in 21 CFR 860.7. Moreover, FDA believes that insufficient information exists to identify the proper materials or design for the total TMJ, the glenoid fossa, and the mandibular condyle prostheses.

In the **Federal Register** of July 17, 1997 (62 FR 38231), FDA issued a proposed rule to require the filing under section 515(b) of the act of a PMA or a notice of completion of a PDP for the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis, and the interarticular disc prosthesis (interpositional implant). FDA included in the preamble to the proposal the agency's proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring these devices to meet the premarket approval requirements of the act, and the benefits to the public from use of the devices (62 FR 38231 at 38233). The July 17, 1997, proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's findings. Under section 515(b)(2)(B) of the act, FDA also provided an opportunity for interested persons to request a change in the classification of the above devices based on new information relevant to its classification. Any petition requesting a change in the classification of the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis, and the interarticular disc prosthesis (interpositional implant) was required to be submitted by August 1, 1997. The comment period closed on October 15, 1997.

B. FDA's Intention to Reclassify the Temporary Mandibular Condyle Prosthesis

FDA received a reclassification petition, dated April 30, 1996 (Docket No. 96P–0253/CP–1), from Howmedica Leibinger, Inc., requesting the agency to reclassify from class III into class II the mandibular condyle prostheses (§ 872.3960) that are intended for temporary reconstruction of the mandibular condyle in tumor resection patients. Consistent with the act and the regulation, FDA referred the petition to the Panel for its recommendation on the requested change in classification. Based on its review of the new data and information contained in the reclassification petition, the Panel recommended, during its February 12, 1997, open meeting, that the temporary mandibular condyle prosthesis for temporary reconstruction of the mandibular condyle in patients who have undergone resective procedures to remove malignant or benign tumors, requiring the removal of the mandibular condyle, be reclassified from class III to class II. The Panel believed that class II with special controls, including a guidance document, patient registries, and labeling addressing certain identified issues, would provide a reasonable assurance of safety and effectiveness.

On the basis of its review and the Panel's recommendation, FDA now believes that the use of the temporary mandibular condyle implant for temporary reconstruction of the mandibular condyle in tumor resection patients does not present a potential unreasonable risk of illness and injury, and that special controls would provide reasonable assurance of the safety and effectiveness of the device. The scope of Howmedica Leibinger's reclassification petition does not encompass all of the intended uses included in the current description of the mandibular condyle prosthesis in § 872.3960. The reclassification requested is limited to the intended use of implantation into the human jaw for temporary reconstruction of the mandibular condyle in patients who have undergone resective procedures to remove malignant or benign tumors, requiring mandibular condyle removal. Therefore, FDA intends to grant this reclassification petition. The agency also intends to propose reclassifying from class III into class II the mandibular condyle prostheses implanted temporarily for such a limited purpose, identifying this subset of devices as the temporary mandibular condyle prosthesis. For the other uses of the mandibular condyle prosthesis for patients with temporomandibular joint dysfunction, or trauma patients, in which the device would be implanted for a much longer period of time for the purpose of permanent reconstruction, the device will remain in its current class (class III), as it is possible to place a device in a dual classification status. For clarity, FDA intends to identify the devices used for the latter purpose (permanent reconstruction) as the permanent mandibular condyle.

II. Summary and Analysis of Comments and FDA's Response

The agency received four comments in response to the proposed rule. These comments were submitted by three manufacturers and distributors of TMJ implants, and a professional dental organization.

1. One comment referenced the reclassification petition, as described in section I.B of this document, citing the February 12, 1997, recommendation of the Dental Products Panel to reclassify from class III into class II the temporary mandibular condyle implant that is intended for temporary reconstruction of the mandibular condyle in tumor resection patients.

As noted previously, FDA intends to propose reclassification of such devices into class II for certain temporary uses. Accordingly, the agency is excluding such temporary uses under § 872.3960(c)(2) of this final rule. The agency is excluding any mandibular condyle prosthesis that is intended to be implanted in the human jaw for temporary reconstruction of the mandibular condyle in patients who have their mandibular condyle removed during resective procedures to remove malignant or benign tumors from the requirement of premarket approval set forth in § 872.3960(c)(1).

2. Two comments objected to the class III classification for metallic condylar prostheses, and other cobalt-chrome and cobalt-chrome/polymethylmethacrylate TMJ implants, claiming that such TMJ devices do not present a potential unreasonable risk of injury and that sufficient information exists to address their safety and effectiveness through special controls.

FDA has responded already to such materials-related issues in the December 20, 1994, final classification rule (59 FR 65475 at 65476).

3. One of the previous comments also objected to the type of scientific evidence proposed by FDA for the PMA's to be submitted for TMJ prostheses, in terms of prospective randomized well-controlled clinical trials using adequate controls. The manufacturer/distributor advocated that valid scientific evidence can be obtained from any of the sources recognized in the Code of Federal Regulations, and that other sources of appropriate data are available than controlled clinical studies.

FDA agrees that there is a variety of evidence that may be included as valid

scientific evidence. In reviewing PMA's, FDA will consider a variety of evidence in determining safety and efficacy. FDA also agrees that the use of randomized concurrent controls in the clinical study of patients that require total joint replacement may not always be appropriate.

4. One comment strongly supported the FDA proposal to require a PMA or a notice of completion of a PDP for these devices. The favorable comment emphasized that this action ''* * * would enhance the agency's ability to scrutinize and control these devices both before and after they enter the medical marketplace, and thereby better serve the needs of TMJ patients and the public.''

III. Final Rule

Under section 515(b)(3) of the act, FDA is adopting the proposed findings as published in the preamble to the proposed rule and is issuing this final rule to require premarket approval of the TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis (intended for permanent reconstruction), and the interarticular disc prosthesis (interpositional implant).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed with FDA within 90 days of the effective date of this regulation for any total TMJ prosthesis, glenoid fossa prosthesis, mandibular condyle prosthesis (intended for permanent reconstruction), or interarticular disc prosthesis (interpositional implant) that was in commercial distribution before May 28, 1976, or that have been found by FDA to be substantially equivalent to such devices on or before March 30, 1999. An approved PMA is required to be in effect for any such devices on or before 180 days after FDA files the application or a declared completed PDP within 90 days after FDA files a notice of completion. Any total TMJ prosthesis, glenoid fossa prosthesis, mandibular condyle prosthesis (intended for permanent reconstruction) or interarticular disc prosthesis (interpositional implant) that was not in commercial distribution before May 28, 1976, or that FDA has not found, on or before March 30, 1999, to be substantially equivalent to such devices that were in commercial distribution before May 28, 1976, are required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for a total (TMJ) prosthesis, glenoid fossa prosthesis, mandibular condyle prosthesis (intended for permanent reconstruction), or interarticular disc prosthesis (interpositional implant) is not filed on or before March 30, 1999, that device will be deemed adulterated under section 501(f)(1)(A) of the act (21 U.S.C. 351(f)(1)(A)), and commercial distribution of the device will be required to cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations under part 812 (21 CFR part 812) are met.

Under § 812.2(d) of the IDE regulations, FDA hereby stipulates that the exemptions from the IDE requirements in § 812.2(c)(1) and (c)(2) will no longer apply to clinical investigations of the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis (intended for permanent reconstruction), and the interarticular disc prosthesis (interpositional implant). Further, FDA concludes that investigational total TMJ prosthetic devices, glenoid fossa prosthetic devices, mandibular condyle prosthetic devices (intended for permanent reconstruction), and interarticular disc prosthetic (interpositional implant) devices are significant risk devices as defined in § 812.3(m) and advises that as of the effective date of the regulations in §§ 872.3940(c), 872.3950(c), 872.3960(c)(1), and 872.3970(c), respectively, requirements of the IDE regulations regarding significant devices will apply to any clinical investigations of any of these devices. For any total TMJ prosthesis, glenoid fossa prosthesis, mandibular condyle prosthesis (intended for permanent reconstruction), or interarticular disc prosthesis (interpositional implant) that is not subject to a timely filed PMA or notice of completion of a PDP, an IDE must be in effect under § 812.20 on or before March 30, 1999, or distribution of the device for investigational purposes must cease. FDA advises all persons currently sponsoring a clinical investigation involving the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis (intended for permanent reconstruction), or the interarticular disc prosthesis (interpositional implant) to submit an IDE application to FDA no later than March 1, 1999, to avoid the interruption of ongoing investigations.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

The agency has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354) (as amended by subtitle D of the Small Business Regulatory Fairness Act (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because PMA's for these devices could have been required by FDA as early as June 30, 1997, and manufacturers have been aware since December 20, 1994, that these devices are class III devices that would be subject to premarket approval, and because firms that distributed these devices prior to May 28, 1976, or whose devices have been found to be substantially equivalent to the total TMJ prosthesis, the glenoid fossa prosthesis, the mandibular condyle prosthesis (intended for permanent reconstruction), and the interarticular disc prosthesis (interpositional implant), will be permitted to continue marketing these TMJ devices during FDA's review of the PMA or the notice of completion of the PDP, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.3940 is amended by revising paragraph (c) to read as follows:

§ 872.3940 Total temporomandibular joint prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 30, 1999, for any total temporomandibular joint prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before March 30, 1999, been found to be substantially equivalent to a total temporomandibular joint prosthesis that was in commercial distribution before May 28, 1976. Any other total temporomandibular joint prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

3. Section 872.3950 is amended by revising paragraph (c) to read as follows:

§ 872.3950 Glenoid fossa prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 30, 1999, for any glenoid fossa prosthesis that was in commercial distribution before May 28, 1976, or that has on or before March 30, 1999, been found to be substantially equivalent to a glenoid fossa prosthesis that was in commercial distribution before May 28, 1976. Any other glenoid fossa prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

4. Section 872.3960 is amended by revising paragraph (c) to read as follows:

§ 872.3960 Mandibular condyle prosthesis.

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. (1) Except as described in paragraph (c)(2) of this section, a PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 30, 1999, for any mandibular condyle prosthesis that was in commercial distribution before May 28, 1976, or that has, on or before March 30, 1999, been found to be substantially equivalent to a mandibular condyle prosthesis that was in commercial distribution before May 28, 1976. Any other mandibular condyle prosthesis shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

(2) No effective date has been established of the requirement for premarket approval for any mandibular condyle prosthesis intended to be implanted in the human jaw for temporary reconstruction of the mandibular condyle in patients who have undergone resective procedures to remove malignant or benign tumors, requiring the removal of the mandibular condyle. See § 870.3 of this chapter.

5. Section 872.3970 is amended by revising paragraph (c) to read as follows:

§ 872.3970 Interarticular disc prosthesis (interpositional implant).

* * * * *

(c) *Date PMA or notice of completion of a PDP is required*. A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before March 30, 1999, for any interarticular disc prosthesis (interpositional implant) that was in commercial distribution before May 28, 1976, or that has on or before March 30, 1999, been found to be substantially equivalent to an interarticular disc prosthesis (interpositional implant) that was in commercial distribution before May 28, 1976. Any other interarticular disc prosthesis (interpositional implant) shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: November 23, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–34483 Filed 12–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 98–3467]

RIN 2125–AE36

Truck Size and Weight; National Network; North Dakota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document modifies the National Network for commercial motor vehicles by adding a route in North Dakota. The National Network was established by a final rule on truck size and weight published on June 5, 1984, as since modified. This rulemaking adds one segment to the National Network as requested by the State of North Dakota.

DATES: This rule is effective January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis (202–366–2212), or Mr. Charles Medalen, Office of the Chief Counsel (202–366–1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act of 1982 (STAA), 49 U.S.C. 31111, 31113–31114, may operate, was established by a final rule published in the **Federal Register** on June 5, 1984 (49 FR 23302), as subsequently modified. These highways are located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed in appendix A of 23 CFR Part 658.

Procedures for the addition and deletion of routes are outlined in 23 CFR 658.11 and include the issuance of a notice of proposed rulemaking (NPRM) before final rulemaking.

In accordance with these procedures, the State of North Dakota, under authority of the Governor, requested the addition of one segment to the National Network. The segment requested is

generally described as ND Highway 32 from the west junction of ND Highway 13 north to Interstate 94, a distance of approximately 56 miles. The segment was reviewed by State and FHWA offices for general adherence to the criteria of 23 CFR 658.9 and found to provide for the safe operation of larger commercial vehicles and for the needs of interstate commerce. A notice of proposed rulemaking (NPRM) listing North Dakota's proposed change to the National Network was published on May 18, 1998 (63 FR 27228). The closing date for comments was July 17, 1998.

Discussion of Comments

Only one comment was received. The Melroe Company supports the request to include Highway 32 from the west junction of ND Highway 13 north to Interstate 94 in the National Network. This carrier has operated double trailers for 13 years and sees the addition of Hwy 32 to the network as an opportunity to reduce the amount of travel by its vehicles on 2-lane roads. Presently Melroe vehicles must travel 119 miles via North Dakota routes 13, 1, 11, and 281 to reach Interstate 94 via National Network routes. The addition of ND route 32 will reduce the travel from Gwinner to Interstate 94 to 54 miles, a reduction of 65 miles per trip.

Modifications of the National Network

Overall we find that the record here, including the information introduced by the State of North Dakota together with comments submitted by the Melroe Company, supports the addition of the involved segment of Highway 32 to the National Network for purposes of enhanced safety, convenience, and support of interstate commerce. Accordingly, the FHWA will modify the regulations at 23 CFR Part 658 by adding the requested route for North Dakota.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rulemaking provides a technical amendment to 23 CFR 658, adding a certain highway segment in accordance with statutory provisions. This segment represents a very small portion of the National Network and has a negligible impact on the prior system. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. As noted previously, this rulemaking provides a technical amendment to 23 CFR 658, adding a certain highway segment in accordance with statutory provisions. This segment represents a very small portion of the National Network and has a negligible impact on the prior system. This rulemaking will allow motor carriers, including small carriers, access to a highway segment previously not available to them.

Based on its evaluation of this rule, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rulemaking relates to the Federal-aid Highway Program which is a financial assistance program in which State, local, or tribal governments have authority to adjust their program in accordance with changes made in the program by the Federal government, and thus is excluded from the definition of Federal mandate under the Unfunded Mandates Reform Act of 1995.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

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 in 23 CFR Part 658

Grants programs—transportation, Highways and roads, Motor carrier—size and weight.

Issued on: December 22, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, Chapter I, appendix A to Part 658 for the State of North Dakota as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111—31114; 49 CFR 1.48.

2. Appendix A to Part 658 is amended for the State of North Dakota by adding a new route listing entry after the listing for ND 13, ND 1 S. Jct., MN State Line to read as follows:

Appendix A to Part 658—National Network—Federally-Designated Routes

* * * * *

NORTH DAKOTA

Route	From	To
*	*	*
ND 32	West Junction of ND Highway 13	I–94
*	*	*

[FR Doc. 98–34636 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8801]

RIN 1545–AU39

Arbitrage Restrictions on Tax-Exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by State and local governments. Changes to applicable law were made by the Tax Reform Act of 1986. These regulations affect issuers of tax-exempt bonds and provide guidance for complying with the arbitrage regulations.

DATES: Effective Date: These regulations are effective on March 1, 1999.

Applicability Date: These regulations are applicable to bonds sold on or after March 1, 1999.

Issuers may apply these regulations to bonds sold on or after December 30, 1998 and before March 1, 1999.

FOR FURTHER INFORMATION CONTACT: David White, 202–622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1490. Responses to these collections of information are required to obtain the benefits of a safe harbor.

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

The estimated annual burden per record keeper varies from .75 hour to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

These final regulations contain amendments to the income tax regulations (26 CFR Part 1) under section 148 of the Internal Revenue Code of 1986 (Code). Section 148 provides rules addressing the use of proceeds of tax-exempt State and local bonds to acquire higher-yielding investments. On June 18, 1993, final regulations (TD 8476) relating to the arbitrage restrictions and related rules under sections 103, 148, 149, and 150 were published in the **Federal Register** (58 FR 33510). Corrections to these regulations were published in the **Federal Register** on August 23, 1993 (58 FR 44451), and May 11, 1994 (59 FR 24350).

On June 27, 1996, a notice of proposed rulemaking (FI–28–96) relating to the arbitrage restrictions was published in the **Federal Register** (61 FR 33405). The proposed regulations provide a rebuttable presumption for establishing fair market value for United States Treasury obligations that are purchased other than directly from the United States Treasury. In addition, the proposed regulations provide a rebuttable presumption that a solicitation that meets certain requirements is a bona fide solicitation for the guaranteed investment contract safe harbor of § 1.148–5(d)(6)(iii). A public hearing was held on Thursday, October 24, 1996, and written comments were received. After consideration of all the comments, the regulations proposed by FI–28–96 are, with modifications, adopted by revision to § 1.148–5(d)(6)(iii). The changes are discussed below.

Explanation of Provisions

A. In General

Due to concerns regarding the fair market purchase price of United States Treasury obligations purchased other than directly from the United States Treasury, the proposed regulations provide a rebuttable presumption for establishing fair market value. The proposed regulations generally apply the principles underlying the existing safe harbor in the arbitrage regulations for establishing fair market value for guaranteed investment contracts.

The proposed regulations also provide a rebuttable presumption that a solicitation meeting the requirements of the proposed regulations will be a bona fide solicitation for the guaranteed investment contract safe harbor of existing § 1.148–5(d)(6)(iii).

Modifications to the proposed regulations have been made to clarify various technical aspects in response to comments received.

B. Safe Harbor

Commentators noted that a rebuttable presumption in the proposed regulations for purchases of United States Treasury obligations provides a lower level of protection to issuers than the safe harbor applicable to guaranteed investment contracts. Commentators generally requested that the final regulations provide a safe harbor for the purchase of United States Treasury obligations.

The final regulations create a safe harbor for all investments covered by the regulations, provided that the issuer receives at least three bids as required by the regulations. The premise of the final regulations is that a bidding procedure satisfying the requirements of the final regulations will produce a price that equals fair market value. If the requirements of the final regulations are not in fact met, no assumption can be made about the relationship of the price paid to fair market value. However, all reasonable and prudent actions taken by the issuer under the circumstances may be considered in determining whether the issuer paid fair market value.

C. Scope of Final Regulations

Generally, the proposed regulations apply to United States Treasury obligations purchased other than directly from the United States Treasury. Commentators requested clarification regarding the scope of the proposed regulations and requested that the regulations only apply to investments purchased for yield restricted refunding and yield restricted sinking fund escrows. In addition, commentators asked that the proposed regulations be expanded to apply to other types of investments that may be purchased for an escrow (e.g., REFCORP strips).

The final regulations apply only to guaranteed investment contracts and yield restricted defeasance escrows. With respect to yield restricted defeasance escrows, the final regulations expand the scope of investments covered by the proposed regulations to apply to all investments purchased for the escrow (e.g., United States Agency obligations, REFCORP strips and corporate obligations).

D. Guaranteed Investment Contracts

Commentators requested clarification regarding which investments are covered by the safe harbor for guaranteed investment contracts and which would be covered by the proposed regulations.

The term guaranteed investment contract generally does not include investments purchased for a yield restricted defeasance escrow. However, the term guaranteed investment contract does include escrow float contracts and similar agreements purchased for a yield restricted defeasance escrow. In addition, the term guaranteed investment contract includes debt service fund forward agreements and debt service reserve fund agreements (e.g., agreements to deliver United States Treasury obligations over a period of time).

E. No Last Look

The proposed regulations state that all providers must have equal opportunity to bid and that no provider is permitted to review other bids before bidding (e.g., a last look). A small number of commentators noted that the existence of a last look may result in higher yields from competing providers. The final regulations retain the no last look requirement because permitting a last look may adversely affect the bona fides of the bidding process.

F. Reasonably Competitive Providers

The proposed regulations provide that all bidders are required to be reasonably competitive providers of investments of the type being purchased. Numerous comments were received regarding the meaning of the phrase ''reasonably competitive provider,'' and commentators expressed concern that a bid from a non-competitive provider may prevent the requirements of the regulations from being satisfied.

The final regulations modify this provision. The final regulations provide that the issuer must solicit at least three bids from reasonably competitive providers and that the issuer must receive at least one bid from a reasonably competitive provider. For purposes of the final regulations, a reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased. For example, in connection with the solicitation of bids for a guaranteed investment contract, an entity that has an established industry reputation as a competitive provider of guaranteed investment contracts is a reasonably competitive provider.

G. No Material Financial Interest

The proposed regulations, like the existing safe harbor for guaranteed investment contracts, provide that the issuer must receive at least three bona fide bids from providers that have no material financial interest in the issue. For this purpose, the proposed regulations provide that underwriters and financial advisors for an issue are considered to have a material financial interest. Numerous comments were received regarding the scope of entities that are considered to have a material financial interest under the proposed regulations.

The final regulations clarify that, for purchases of any investment covered by the safe harbor, the lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue. Any entity acting as a financial advisor with respect to the purchase of the investment at the time that the bid specification form is submitted to potential providers is also deemed to have a material financial interest in the issue. In addition, the final regulations require the provider to represent that its bid is not based on any other formal or informal agreement that the provider has with the issuer or any other person. A provider that is a related party to a provider that has a material financial interest in the issue is also deemed to have a material financial interest in the issue.

H. Commercially Reasonable Terms

The proposed regulations provide that the terms of the purchase agreement must be reasonable. The existing safe harbor for guaranteed investment contracts provides that the terms of the guaranteed investment contract, including the collateral security requirements, must be reasonable. A number of commentators requested clarification regarding what reasonable means in connection with a solicitation of United States Treasury obligations.

The final regulations provide that the terms of the bid specification for any investment covered by the safe harbor must be commercially reasonable. A term is commercially reasonable if there is a legitimate business purpose for including the term in the bid specifications other than to lower the yield or increase the cost of the bid. For example, in connection with the solicitation of investments for a yield restricted defeasance escrow, a commercially unreasonable term would be a hold firm period that is longer than the issuer reasonably requires.

I. Comparison to State and Local Government Series Securities

The proposed regulations provide that the yield on any United States Treasury obligation purchased by the issuer may not be less than the yield then available on State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt (SLGs) with the same maturity. Commentators requested that the SLGs comparison be removed or that issuers be allowed to make the comparison on a portfolio-by-portfolio basis. Commentators also requested guidance about the time period in which the SLGs comparison is to be made.

In general, the final regulations provide that the safe harbor does not apply to investments purchased for a yield restricted defeasance escrow if the lowest cost bid is greater than the cost of the most efficient SLG portfolio. The final regulations provide that the lowest cost bid is the lowest bid for the portfolio or, if the issuer compares bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the issuer from a provider at the time a guaranteed investment contract is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements of the final regulations is taken into

account in determining the lowest cost bid.

The final regulations provide the following rules for comparing the lowest cost bid to SLGs. First, the most efficient SLG portfolio consists of one or more SLG securities that will allow the issuer to defease the refunded obligations at the lowest overall cost. Second, the comparison of the most efficient SLG portfolio and the lowest cost bid must be made at the time that bids are required to be submitted pursuant to the terms of the bid specifications. Intra-day pricing movements and closing spot prices of investments before and after the time in which the comparison to SLGs is required to be made are not relevant. Third, if SLGs are not available for purchase on the day that bids are required to be submitted pursuant to terms of the bid specifications because Treasury has suspended sales of those securities, the comparison of the most efficient SLG portfolio to the lowest cost bid is not required.

No comparison to SLGs is required for purchases of guaranteed investment contracts.

J. Forward Pricing Data

The proposed regulations provide that the yield on United States Treasury obligations purchased by the issuer may not be significantly less than the yield then available from the provider on reasonably comparable United States Treasury obligations offered to other persons for purchase on terms comparable to those offered to the issuer from a source of funds other than tax-exempt bonds. If closely comparable forward prices are not available, a reasonable basis for this comparison may be by reference to implied forward prices for Treasury obligations based on standard financial formulas. A certificate provided by the agent conducting the bidding process will establish that the comparison is met. The existing safe harbor for guaranteed investment contracts provides that the yield on the guaranteed investment contract may not be less than the yield then available from the provider on reasonably comparable guaranteed investment contracts, if any, offered to other persons from a source of funds other than gross proceeds of tax-exempt bonds.

Commentators noted that, in general, the comparison required by the proposed regulations is either too complex or not possible to construct. In lieu of a comparability requirement, commentators recommended that the regulations adopt certain additional safeguards to protect the integrity of the bidding process.

The final regulations remove the comparability requirement for all investments covered by the safe harbor. However, the final regulations include additional requirements to ensure a competitive bidding process. For example, the final regulations require that the bid form forwarded to potential providers include a statement notifying providers that by submitting a bid the potential provider is representing that it did not consult with any other providers about their bid, and that its bid is not being submitted solely as a courtesy to the issuer or any other person for purposes of satisfying the requirement that the issuer receive three bids. It is anticipated that these additional requirements will ensure that the bids reflect fair market value, as determined without regard to the source of funds.

K. Record Keeping Requirements

The proposed regulations provide that issuers are required to retain certain records and information with the bond documents, including a copy of the bids received (date and time stamped). Numerous comments were received regarding the difficulty of obtaining written bids for Treasury obligations.

The final regulations modify the record keeping requirements and apply those requirements to guaranteed investment contracts. One modification to the record keeping requirements is the elimination of the requirement that the bids be received in writing. The final regulations provide that the requirement for recording the bid is satisfied if the issuer or its agent makes a contemporaneous record of the bid, including the time and date each bid was received, and the identification of the person and entity submitting the bid, and keeps this record with the bond documents.

The final regulations also provide that, if the terms of the purchase agreement deviate from the terms of the bid solicitation form or if a submitted bid is modified, the issuer must keep a record explaining the purpose of the deviation or modification and, if the purchase agreement price differed from the bid, how that price was determined. If the issuer replaces investments in the winning bid portfolio with other investments, the prices of the new investments are not protected by the safe harbor unless those investments are bid under a bidding procedure meeting the requirements of the final regulations.

L. Broker Fees for Yield Restricted Defeasance Escrows

The proposed regulations provide that a fee paid to a bidding agent is a qualified administrative cost only if the fee is comparable to a fee that would be charged for a reasonably comparable investment of obligations acquired with a source of funds other than gross proceeds of tax-exempt bonds and the fee is reasonable. Under the proposed regulations, the fee is presumed to be reasonable if it does not exceed .02 percent of the amount invested in United States Treasury obligations. Commentators noted that the comparability requirement was unclear and that outside the context of municipal bonds, bidding for closely comparable investments is virtually non-existent. Commentators also noted that the .02 percent fee may result in too much compensation in the case of large escrows and too little compensation in the case of small escrows.

The final regulations retain the comparability and reasonableness requirements. However, the final regulations provide that a broker's fee will meet the reasonableness and comparability requirements if the fee does not exceed the lesser of $10,000 or .1 percent of the initial principal amount of investments purchased for the yield restricted defeasance escrow.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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 upon the fact that the amount of time required to meet the record keeping requirement of these final regulations, an estimated annual average of 1 hour per taxpayer, is small. Also, the regulations affect a small number of taxpayers, approximately 1400 annually. 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 preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting information. The principal authors of these regulations are David White and Rebecca Harrigal of the IRS Office of Chief Counsel and Edwin G. Oswald of the Department of the Treasury. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.148–5 is amended as follows:

1. Paragraph (d)(6)(iii) is revised.
2. Paragraph (e)(2)(iv) is added.

The revision and addition read as follows:

§ 1.148–5 Yield and valuation of investments.

* * * * *

(d) * * *

(6) * * *

(iii) *Safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.* The purchase price of a guaranteed investment contract and the purchase price of an investment purchased for a yield restricted defeasance escrow will be treated as the fair market value of the investment on the purchase date if all of the following requirements are satisfied:

(A) The issuer makes a bona fide solicitation for the purchase of the investment. A bona fide solicitation is a solicitation that satisfies all of the following requirements:

(*1*) The bid specifications are in writing and are timely forwarded to potential providers.

(*2*) The bid specifications include all material terms of the bid. A term is material if it may directly or indirectly affect the yield or the cost of the investment.

(*3*) The bid specifications include a statement notifying potential providers that submission of a bid is a representation that the potential provider did not consult with any other potential provider about its bid, that the bid was determined without regard to any other formal or informal agreement that the potential provider has with the issuer or any other person (whether or not in connection with the bond issue), and that the bid is not being submitted solely as a courtesy to the issuer or any other person for purposes of satisfying the requirements of paragraph (d)(6)(iii)(B)(*1*) or (*2*) of this section.

(*4*) The terms of the bid specifications are commercially reasonable. A term is commercially reasonable if there is a legitimate business purpose for the term other than to increase the purchase price or reduce the yield of the investment. For example, for solicitations of investments for a yield restricted defeasance escrow, the hold firm period must be no longer than the issuer reasonably requires.

(*5*) For purchases of guaranteed investment contracts only, the terms of the solicitation take into account the issuer's reasonably expected deposit and drawdown schedule for the amounts to be invested.

(*6*) All potential providers have an equal opportunity to bid. For example, no potential provider is given the opportunity to review other bids (i.e., a last look) before providing a bid.

(*7*) At least three reasonably competitive providers are solicited for bids. A reasonably competitive provider is a provider that has an established industry reputation as a competitive provider of the type of investments being purchased.

(B) The bids received by the issuer meet all of the following requirements:

(*1*) The issuer receives at least three bids from providers that the issuer solicited under a bona fide solicitation meeting the requirements of paragraph (d)(6)(iii)(A) of this section and that do not have a material financial interest in the issue. A lead underwriter in a negotiated underwriting transaction is deemed to have a material financial interest in the issue until 15 days after the issue date of the issue. In addition, any entity acting as a financial advisor with respect to the purchase of the investment at the time the bid specifications are forwarded to potential providers has a material financial interest in the issue. A provider that is a related party to a provider that has a material financial interest in the issue is deemed to have a material financial interest in the issue.

(*2*) At least one of the three bids described in paragraph (d)(6)(iii)(B)(*1*) of this section is from a reasonably competitive provider, within the meaning of paragraph (d)(6)(iii)(A)(*7*) of this section.

(*3*) If the issuer uses an agent to conduct the bidding process, the agent did not bid to provide the investment.

(C) The winning bid meets the following requirements:

(*1*) *Guaranteed investment contracts.* If the investment is a guaranteed investment contract, the winning bid is the highest yielding bona fide bid (determined net of any broker's fees).

(*2*) *Other investments.* If the investment is not a guaranteed investment contract, the following requirements are met:

(*i*) The winning bid is the lowest cost bona fide bid (including any broker's fees). The lowest cost bid is either the lowest cost bid for the portfolio or, if the issuer compares the bids on an investment-by-investment basis, the aggregate cost of a portfolio comprised of the lowest cost bid for each investment. Any payment received by the issuer from a provider at the time a guaranteed investment contract is purchased (e.g., an escrow float contract) for a yield restricted defeasance escrow under a bidding procedure meeting the requirements of this paragraph (d)(6)(iii) is taken into account in determining the lowest cost bid.

(*ii*) The lowest cost bona fide bid (including any broker's fees) is not greater than the cost of the most efficient portfolio comprised exclusively of State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt. The cost of the most efficient portfolio of State and Local Government Series Securities is to be determined at the time that bids are required to be submitted pursuant to the terms of the bid specifications.

(*iii*) If State and Local Government Series Securities from the United States Department of the Treasury, Bureau of Public Debt are not available for purchase on the day that bids are required to be submitted pursuant to terms of the bid specifications because sales of those securities have been suspended, the cost comparison of paragraph (d)(6)(iii) (C)(*2*)(*ii*) of this section is not required.

(D) The provider of the investments or the obligor on the guaranteed investment contract certifies the administrative costs that it pays (or expects to pay, if any) to third parties in connection with supplying the investment.

(E) The issuer retains the following records with the bond documents until three years after the last outstanding bond is redeemed:

(*1*) For purchases of guaranteed investment contracts, a copy of the contract, and for purchases of investments other than guaranteed investment contracts, the purchase agreement or confirmation.

(*2*) The receipt or other record of the amount actually paid by the issuer for the investments, including a record of

any administrative costs paid by the issuer, and the certification under paragraph (d)(6)(iii)(D) of this section.

(*3*) For each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results.

(*4*) The bid solicitation form and, if the terms of the purchase agreement or the guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation. For example, if the issuer purchases a portfolio of investments for a yield restricted defeasance escrow and, in order to satisfy the yield restriction requirements of section 148, an investment in the winning bid is replaced with an investment with a lower yield, the issuer must retain a record of the substitution and how the price of the substitute investment was determined. If the issuer replaces an investment in the winning bid portfolio with another investment, the purchase price of the new investment is not covered by the safe harbor unless the investment is bid under a bidding procedure meeting the requirements of this paragraph (d)(6)(iii).

(*5*) For purchases of investments other than guaranteed investment contracts, the cost of the most efficient portfolio of State and Local Government Series Securities, determined at the time that the bids were required to be submitted pursuant to the terms of the bid specifications.

(e) * * *

(2) * * *

(iv) *Special rule for investments purchased for a yield restricted defeasance escrow.* For investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost only if the following requirements are satisfied:

(A) The fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds, and it is reasonable. The fee is deemed to be comparable to a fee that would be charged for a comparable investment acquired with a source of funds other than gross proceeds of tax-exempt bonds, and to be reasonable if the fee does not exceed the lesser of $10,000 or .1% of the initial principal amount of investments deposited in the yield restricted defeasance escrow.

(B) For transactions in which a guaranteed investment contract and other investments are purchased for a yield restricted defeasance escrow in a single investment (e.g., an issuer bids United States Treasury obligations and an escrow float contract collectively), a broker's fee described in paragraph (e)(2)(iv)(A) of this section will apply to the initial principal amount of the investment deposited in the yield restricted defeasance escrow, and a broker's fee described in paragraph (e)(2)(iii) of this section will apply only to the guaranteed investment contract portion of the investment.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (c) is amended by revising the entry for 1.148–5 in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.148–5	1545–1098, 1545–1490
* * * * *	

Approved: December 17, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–34209 Filed 12–29–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

28 CFR Part 23

[OJP(BJA)–1177B]

RIN 1121–ZB40

Criminal Intelligence Sharing Systems; Policy Clarification

AGENCY: Bureau of Justice Assistance (BJA), Office of Justice Programs (OJP), Justice.

ACTION: Clarification of policy.

SUMMARY: The current policy governing the entry of identifying information into criminal intelligence sharing systems requires clarification. This policy clarification is to make clear that the entry of individuals, entities and organizations, and locations that do not otherwise meet the requirements of reasonable suspicion is appropriate when it is done solely for the purposes of criminal identification or is germane to the criminal subject's criminal activity. Further, the definition of ''criminal intelligence system'' is clarified.

EFFECTIVE DATE: This clarification is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Kendall, General Counsel, Office of Justice Programs, 810 7th Street N.W., Washington, D.C. 20531, (202) 307–6235.

SUPPLEMENTARY INFORMATION:

The operation of criminal intelligence information systems is governed by 28 CFR Part 23. This regulation was written to both protect the privacy rights of individuals and to encourage and expedite the exchange of criminal intelligence information between and among law enforcement agencies of different jurisdictions. Frequent interpretations of the regulation, in the form of policy guidance and correspondence, have been the primary method of ensuring that advances in technology did not hamper its effectiveness.

Comments

The clarification was opened to public comment. Comments expressing unreserved support for the clarification were received from two Regional Intelligence Sharing Systems (RISS) and five states. A comment from the Chairperson of a RISS, relating to the use of identifying information to begin new investigations, has been incorporated. A single negative comment was received, but was not addressed to the subject of this clarification.

Use of Identifying Information

28 CFR 23.3(b)(3) states that criminal intelligence information that can be put into a criminal intelligence sharing system is ''information relevant to the identification of and the criminal activity engaged in by an individual who or organization which is reasonably suspected of involvement in criminal activity, and * * * [m]eets criminal intelligence system submission criteria.'' Further, 28 CFR 23.20(a) states that a system shall only collect information on an individual if ''there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.'' 28 CFR 23.20(b) extends that limitation to

collecting information on groups and corporate entities.

In an effort to protect individuals and organizations from the possible taint of having their names in intelligence systems (as defined at 28 C.F.R. § 23.3(b)(1)), the Office of Justice Programs has previously interpreted this section to allow information to be placed in a system only if that information independently meets the requirements of the regulation. Information that might be vital to identifying potential criminals, such as favored locations and companions, or names of family members, has been excluded from the systems. This policy has hampered the effectiveness of many criminal intelligence sharing systems.

Given the swiftly changing nature of modern technology and the expansion of the size and complexity of criminal organizations, the Bureau of Justice Assistance (BJA) has determined that it is necessary to clarify this element of 28 CFR Part 23. Many criminal intelligence databases are now employing ''Comment'' or ''Modus Operandi'' fields whose value would be greatly enhanced by the ability to store more detailed and wide-ranging identifying information. This may include names and limited data about people and organizations that are not suspected of any criminal activity or involvement, but merely aid in the identification and investigation of a criminal suspect who independently satisfies the reasonable suspicion standard.

Therefore, BJA issues the following clarification to the rules applying to the use of identifying information. Information that is relevant to the identification of a criminal suspect or to the criminal activity in which the suspect is engaged may be placed in a criminal intelligence database, provided that (1) appropriate disclaimers accompany the information noting that is strictly identifying information, carrying no criminal connotations; (2) identifying information may not be used as an independent basis to meet the requirement of reasonable suspicion of involvement in criminal activity necessary to create a record or file in a criminal intelligence system; and (3) the individual who is the criminal suspect identified by this information otherwise meets all requirements of 28 CFR Part 23. This information may be a searchable field in the intelligence system.

For example: A person reasonably suspected of being a drug dealer is known to conduct his criminal activities at the fictional ''Northwest Market.'' An agency may wish to note this information in a criminal intelligence database, as it may be important to future identification of the suspect. Under the previous interpretation of the regulation, the entry of ''Northwest Market'' would not be permitted, because there was no reasonable suspicion that the ''Northwest Market'' was a criminal organization. Given the current clarification of the regulation, this will be permissible, provided that the information regarding the ''Northwest Market'' was clearly noted to be non-criminal in nature. For example, the data field in which ''Northwest Market'' was entered could be marked ''Non-Criminal Identifying Information,'' or the words ''Northwest Market'' could be followed by a parenthetical comment such as ''This organization has been entered into the system for identification purposes only—it is not suspected of any criminal activity or involvement.'' A criminal intelligence system record or file could not be created for ''Northwest Market'' solely on the basis of information provided, for example, in a comment field on the suspected drug dealer. Independent information would have to be obtained as a basis for the opening of a new criminal intelligence file or record based on reasonable suspicion on ''Northwest Market.'' Further, the fact that other individuals frequent ''Northwest Market'' would not necessarily establish reasonable suspicion for those other individuals, as it relates to criminal intelligence systems.

The Definition of a ''Criminal Intelligence System''

The definition of a ''criminal intelligence system'' is given in 28 CFR 23.3(b)(1) as the ''arrangements, equipment, facilities, and procedures used for the receipt, storage, interagency exchange or dissemination, and analysis of criminal intelligence information * * *.'' Given the fact that cross-database searching techniques are now common-place, and given the fact that multiple databases may be contained on the same computer system, BJA has determined that this definition needs clarification, specifically to differentiate between criminal intelligence systems and non-intelligence systems.

The comments to the 1993 revision of 28 CFR Part 23 noted that ''[t]he term 'intelligence system' is redefined to clarify the fact that historical telephone toll files, analytical information, and work products that are not either retained, stored, or exchanged and criminal history record information or identification (fingerprint) systems are excluded from the definition, and hence are not covered by the regulation * * *.'' 58 FR 48448–48449 (Sept. 16, 1993.) The comments further noted that materials that ''may assist an agency to produce investigative or other information for an intelligence system * * *'' do not necessarily fall under the regulation. *Id*.

The above rationale for the exclusion of non-intelligence information sources from the definition of ''criminal intelligence system,'' suggests now that, given the availability of more modern non-intelligence information sources such as the Internet, newspapers, motor vehicle administration records, and other public record information on-line, such sources shall not be considered part of criminal intelligence systems, and shall not be covered by this regulation, even if criminal intelligence systems access such sources during searches on criminal suspects. Therefore, criminal intelligence systems may conduct searches across the spectrum of non-intelligence systems without those systems being brought under 28 CFR Part 23. There is also no limitation on such non-intelligence information being stored on the same computer system as criminal intelligence information, provided that sufficient precautions are in place to separate the two types of information and to make it clear to operators and users of the information that two different types of information are being accessed. Such precautions should be consistent with the above clarification of the rule governing the use of identifying information. This could be accomplished, for example, through the use of multiple windows, differing colors of data or clear labeling of the nature of information displayed.

Additional guidelines will be issued to provide details of the above clarifications as needed.

Dated: December 22, 1998.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 98–34547 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 95–054]

RIN 2115–AF17

Regattas and Marine Parades

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; delay of effective date.

SUMMARY: The Coast Guard is delaying the effective date of the interim rule on regatta and marine parades published in the **Federal Register** on June 26, 1996. The interim rule more precisely identifies those marine events that require a permit, those that require only written notice to the Coast Guard, and those that require neither. A change in the effective date from January 1, 1999, to January 2, 2000, is necessary to allow additional time to further assess the potential impact, if any, of the interim rule on the environment.

EFFECTIVE DATE: The interim rule published on June 26, 1996 (61 FR 33027), and delayed by documents published on November 26, 1996 (61 FR 60027), and December 29, 1997 (62 FR 67507), is effective on January 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Project Manager, Office of Boating Safety, Program Management Division, 202–267–0979. You may obtain a copy of the interim rule and subsequent notices by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or read it on the Internet at the Web Site for the Office of Boating Safety at URL address http://www.uscgboating.org.

SUPPLEMENTARY INFORMATION: On June 26, 1996, the Coast Guard published an interim rule and notice of availability of environmental assessment (CGD 95–054) entitled ''Regattas and Marine Parades'' in the **Federal Register** (61 FR 33027). The interim rule revised the Coast Guard's marine event regulations to eliminate unnecessary requirements while continuing to protect the safety of life. The rule more precisely identifies those events that require a permit, those that require only written notice to the Coast Guard, and those that require neither. The environmental assessment and proposed finding of no significant impact that support this rulemaking were made available to the public.

Approximately 85 comments were received in response to the interim rule and notice of availability of the environmental assessment and to the Coast Guard's previous requests for comments. Many of these comments raised concerns regarding the reporting requirements placed on the marine event sponsors and the potential environmental effects associated with changing the current regulations on regatta and marine parade permitting procedures. In addition, several comments received in response to a draft environmental impact statement (EIS) entitled ''U.S. Coast Guard Atlantic Protected Living Marine Resources Initiative'' reiterated concerns raised by the comments on the interim rule. Based on these comments and on the concerns raised during the ongoing consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS), the Coast Guard delayed the effective date of the interim rule. Because the Coast Guard has not yet completed its consultation with the FWS and NMFS or the required environmental documentation, the Coast Guard is delaying the effective date to January 2, 2000.

Accordingly, in FR Doc. 96–16319 published in the **Federal Register** on June 26, 1996, at 61 FR 33027, as amended by notices of delay of effective date published on November 26, 1996, at 61 FR 60027 and December 29, 1997, at 62 FR 67570, the effective date for the referenced interim rule is changed from January 1, 1999, to January 2, 2000.

Dated: December 21, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–34442 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–080]

Drawbridge Operation Regulation; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Chicago, Milwaukee, St. Paul and Pacific railroad bridge at Mile 1.0, Black River, at La Crosse, Wisconsin. This deviation amends the federal drawbridge operation regulations allowing the bridge owner to close the drawbridge from 12:01 a.m. on January 4, 1999, through 11:59 p.m. on February 4, 1999. This deviation is issued to allow for the removal of mechanical devices for rebuilding to avoid problems during the summer of 1999.

DATES: The deviation is effective from 12:01 a.m. on January 4, 1999, through 11:59 p.m. on February 4, 1999.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832; telephone: (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Chicago, Milwaukee, St. Paul and Pacific railroad bridge has a vertical clearance of 17.0 feet above low water and 4.0 feet above high water in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows. This deviation has been coordinated with the commercial waterway industry, who do not object. The Canadian Pacific Railway has requested a temporary deviation from the normal operation of the bridge to remove the mechanical devices for rebuilding. This work is essential for the continued operation of the drawbridge and to avoid problems in the summer of 1999.

This deviation is for the period of 12:01 a.m. on January 4, 1999, through 11:59 p.m. on February 4, 1999. This temporary deviation allows the draw of the Chicago, Milwaukee, St. Paul and Pacific railroad to remain closed to navigation. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal if at least two hours notice is given.

Dated: December 16, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 98–34632 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

46 CFR Part 32

[USCG 1998–4443]

RIN 2115–AF65

Emergency Control Measures for Tank Barges

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements measures for maintaining or regaining control of a tank barge that will reduce the likelihood of a tank barge's grounding and spilling its cargo. These measures are necessary because without them a tug that loses its tow lacks ready means for regaining control of it.

DATES: This interim rule is effective March 30, 1999 except for 33 CFR 155.230(b)(1) and 46 CFR 32.15–15(e), which are effective on December 11, 2000. The incorporation by reference of certain publications listed in the rule is

approved by the Director of the Federal Register as of March 30, 1999. Comments must reach the Docket Management Facility on or before March 30, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility (USCG–1998–4443), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents, as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this interim rule, call Mr. Robert Spears, Project Manager, Office of Standards Evaluation and Development, telephone 202–267–1099; or Mr. Allen Penn, Technical Advisor, Office of Design and Engineering Standards, telephone 202–267–2997. For questions on viewing or submitting material to the docket, call Ms. Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (USCG–1998–4443) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. We may change this interim rule in view of the comments.

The Coast Guard plans to hold public meetings for this interim rule. We will hold these meetings for the purpose of receiving oral opinions and presentations on the interim rule. We will announce the dates, times, and places of the public meetings in a later notice in the **Federal Register**.

Background and Purpose

On January 19, 1996, the tugboat SCANDIA, towing the oil barge NORTH CAPE, caught fire five miles off the coast of Rhode Island. The crew could not control the fire, and without power they were unable to prevent the barge, carrying 4 million gallons of oil, from grounding and spilling about a quarter of its contents into the coastal waters. The NORTH CAPE spill led Congress to add a new law, 46 U.S.C. 3719, in section 901 of the 1996 Coast Guard Authorization Act (Pub. L. 104–324), directing the Secretary of Transportation to prescribe regulations necessary to reduce oil spills from single-hull non-self-propelled tank vessels. A notice of proposed rulemaking (NPRM) on safety of towing vessels and tank barges was published on October 6, 1997 (62 FR 52057).

Statutory Mandate

46 U.S.C. 3719 directs us to issue regulations requiring a single-hull, non-self-propelled tank vessel (or the vessel towing it), operating in the open ocean or coastal waters, to have at least one of the three safety measures listed in the law. Under reasonably foreseeable sea conditions, without additional assistance, either the barge or the vessel towing it must have—

(1) A crewmember and an operable anchor on board the tank barge that together can stop the barge from drifting;

(2) An emergency system that will allow the tank barge to be retrieved by the towing vessel if the towline ruptures; or

(3) Another measure or combination of measures that the Coast Guard determines will provide equivalent protection against grounding of the tank vessel comparable to that provided by the measure(s) described in paragraph (1) or (2).

Another law to reduce oil spills from single-hull tank barges, 46 U.S.C. 4102, requires the Coast Guard to issue regulations on fire suppression systems and other measures for towing vessels. A rulemaking to be published early next year will implement some of the fire protection requirements proposed in the NPRM and another will propose other additional measures in response to comments we received. Both laws mandating new rules require the Coast Guard to consult with the Towing Safety Advisory Committee (TSAC) in developing the new regulations. As noted in the NPRM, the recommendations of the TSAC were considered by the Coast Guard and incorporated as we deemed appropriate.

Regulatory Approach

In response to these statutory mandates, the Coast Guard proposed rules for fire protection and fire-fighting on towing vessels operating anywhere in U.S. waters, and rules for arresting and retrieving tank barges. The rules for barge control would apply to any tank barges being towed on the Great Lakes, the territorial seas of the United States, or the high seas [62 FR 52057 (6 October 1997)]. The NPRM explained why it did not include inland waters. Because the waters of Long Island Sound are inside the baseline of the territorial sea, which generally follows the coastline of the United States, they were inadvertently excluded from that part of the proposed rules applicable on offshore waters only. A correction notice, published in the **Federal Register** on June 11, 1998 (63 FR 31958), clarified that the proposed rules would apply to tank barges and vessels towing them on Long Island Sound.

The extended period for public comment on the NPRM closed on May 11, 1998. After analyzing written comments, statements from two public meetings, and additional casualty and economic data, we made two key decisions. First, to expedite action with respect to emergency control measures for tank barges, the proposals of the NPRM needed to be separated into more manageable parts. Second, an operable anchoring system is an essential part of the combination of measures needed to reduce the chances of oil spills from any single-hull tank barge operating on the waters listed in this interim rule. The marine casualty report (available in the docket) on the fire on the tugboat SCANDIA, resulting in the grounding of the tank barge NORTH CAPE, revealed that the barge's anchoring system was not operable. Consequently, the Captain of the SCANDIA did not have the option of anchoring the barge until weather conditions improved enough to safely continue the voyage. This is exactly what the Captain of the tugboat OSPREY did last February off the coast of North Carolina. There, the towline parted and the tug was unable to retrieve the barge after repeated attempts to do so. The crew then deployed the barge's anchor, which stopped the drift of the barge, and held it until the tug could safely reestablish the tow. The anchoring and

retrieval measures are parts of a total system for preventing barges from grounding, since one measure may work where the other does not. Therefore, we have shifted our approach from the NPRM, which proposed requiring only one of three emergency control systems, to requiring an anchoring system (on single-hull tank barges) plus one additional measure. Other parts of the total system, including measures for fire protection and fire fighting for towing vessels, will be the subjects of later rulemakings.

Human Element

In this interim rule, it is important to acknowledge the roles and responsibilities of vessel management and the people operating the equipment installed on vessels. The training and performance of the crewmembers may be the critical elements in avoiding the actions that contribute to a casualty. The Coast Guard's program of Prevention Through People (PTP) depends on owners, operators, and other people in positions of responsibility to take an active role in developing and enforcing safety measures to improve performance.

Establishing the Lower Limit of Acceptable Safety Practice

Many tank barges already meet the requirements established in this interim rule. They carry anchoring systems and retrieval systems and they follow adequate operational procedures. Many companies maintain and inspect their equipment with regularity and provide their people training beyond that required by this rule. However, a single poor operator can jeopardize the safety of the industry and place the well-being of the public, the crew, and the environment at risk. The necessity still exists for identifying standards that define the lower limit of acceptable practice.

Open Ocean and Coastal Waters

46 U.S.C. 3719 calls for rules applicable to vessels operating in the ''open ocean or coastal waters.'' The Coast Guard previously interpreted this language to be equivalent to the high seas and territorial sea as defined in 33 CFR part 2. After careful review, we have decided not to substitute ''high seas'' for ''open ocean'' as used in 46 U.S.C. 3719. Instead, for the purposes of this rule, we have determined that open ocean includes the territorial seas of the United States, as they are defined in Presidential Proclamation 5928 of December 27, 1988. Under this approach, the inner boundary of ''coastal waters'' is the baseline of the territorial sea. The outer boundary of the waters on which this rule will apply is a line 12 nautical miles offshore from that baseline. On most waters inside the baseline we need not enforce laws of the kind this interim rule applies, because internal waters afford shelter or quick access to it. There are, however, waters that lie inside the baseline and yet need the protection of this rule. The Great Lakes, Long Island Sound, the Strait of Juan de Fuca, and parts of Puget Sound all come within this rule because their environmental conditions (i.e., wind, currents, wave action) present the very hazards to towing vessels and tank barges that prompted this rule in the first place. Making a determination to enforce these rules farther offshore is not deemed necessary, as any tow coming within 12 miles of the baseline, where groundings are most likely to occur, would be subject to these regulations. The one exception would be foreign-flag tows engaged in innocent passage, which rarely occurs. Foreign-flag tows entering U.S. ports however, are subject to these regulations.

Double-hull Tank Barges

This interim rule applies mainly to single-hull tank barges, as specified in 46 U.S.C. 3719. Regulations already in 33 CFR 155.230 require emergency towing capability for both single-hull and double-hull barges operating outside the boundary line. Double-hull tank barges that currently satisfy 33 CFR 155.230 also satisfy 33 CFR 155.230 as amended by this rule.

Grandfathering; Anchoring Standards

Under existing regulations, tankships and manned seagoing barges built before June 15, 1987, may meet a less stringent standard for their anchoring systems. With revised wording in this rule, the Coast Guard is excluding manned, single-hull tank barges from the grandfathering provisions presently contained in 46 CFR 32.15–15. Allowing single-hull tank barges built before June 15, 1987, to meet lesser standards would reduce the effectiveness of this rule.

The Coast Guard understands the effectiveness of the emergency control system using an anchor is highly dependent upon the design standard and equipment arrangement. Under existing regulations, we have only accepted anchoring standards issued by the American Bureau of Shipping (ABS). With this interim rule, we may accept standards of other recognized classification societies as well. Classification societies become recognized by the Commandant under 46 CFR part 8.

Discussion of Comments and Changes

The Coast Guard received a total of 54 documents containing 208 comments to the public docket of the NPRM on safety of towing vessels. Of these, 67 comments concerned anchors and barge retrieval, and they are addressed in this interim rule. All other comments will be addressed in a separate document specifically covering fire protection measures on towing vessels. The 208 comments consisted of both letters to the docket and remarks at the public meetings in St. Louis, Missouri, and Newport, Rhode Island. The following paragraphs contain summaries of comments and an explanation of any changes made by this rule to the proposed rule for emergency control of tank barges.

Comments Requesting Public Hearings

Six comments requested a public hearing for masters, owners, and operators of towboats, and for the public to discuss the NPRM on safety of towing vessels. Three comments requested that, in addition to public hearings, the comment period be extended. As noted earlier, the Coast Guard held two meetings in the spring of 1998. The statements made at the meetings echo the written comments sent to the docket. In fact, many of the attendees offered the same comments both spoken and written. Tape recordings of each session are available at Coast Guard Headquarters (G–LRA). You may call 202–267–1477 to arrange to review the tapes.

Prevention

Six comments concerned prevention of accidents and oil spills.

1. Two comments suggested that the prevention of oil spills and casualties lies primarily with personnel operating equipment properly and navigating vessels safely. We agree with this assessment. However, while people are the key to prevention, they still need the proper equipment readily available, such as fire protection systems and anchoring or retrieval systems, to minimize the impact of such incidents when they do occur.

2. One comment suggested that the Coast Guard's PTP program coupled with other appropriate measures such as proper manning, has the potential for being the most effective prevention tool. We agree; that is why we proposed or recommended measures such as crew training, muster lists, and proper voyage planning in the NPRM. They remain key components of this rulemaking in general, though not of this interim rule in particular.

3. One comment commended the Coast Guard for recognizing that ''proper preparation and response by vessel crew is more important than requiring and install[ing] * * * additional equipment on a vessel.'' As noted in the summary of the previous comment, we agree with this view, while still recognizing the need for appropriate equipment.

4. One comment agreed with the Coast Guard's effort to consider the roles and responsibilities of the people operating the equipment installed on board vessels. However, it suggested that we include the roles and responsibilities of towing vessels' owners or crews, should barges become adrift. This interim rule clearly identifies the owners of vessels as being responsible for ensuring that the new requirements are met.

5. One comment suggested that the proposed rules focused on the prevention of barge casualties rather than the life and safety of the crew. We do not agree. We are taking a systemic approach in preventing barge casualties, by requiring the anchoring capability and other measures on board, as well as requiring crew training, periodic maintenance, and drills and exercises to test continued operability of the equipment. The NPRM also requested comments on voyage planning to provide the crews of tugs and tows with some early awareness of how their trips might proceed. We received six comments on this issue; the Coast Guard plans a separate Supplemental Notice of Proposed Rulemaking (SNPRM) to address the use of voyage planning to improve the safety of towing vessels and tank barges.

Plain Language

One comment stated that the question-and-answer format was very useful in explaining the reasoning behind the proposed change. The comment also recommended using that format in future proposed rulemakings. We agree; and, in keeping with the President's Memorandum of June 1, 1998, endorsing plain language in government writing, we will continue using that format in future rulemakings.

Recommendations of the Regional Risk Assessment Team (RRAT)

Twenty-three comments referred to the recommendations of the RRAT.

1. Twelve comments stated that the proposed rule did not follow the recommendations.

2. Six comments stated that the proposed rule was not strict enough.

3. One comment stated that the recommendations were meant for the waters of the First Coast Guard District only, while four other comments suggested a separate rulemaking for New England. We agree in part. Any rule applying to equipment aboard vessels should be a national rule rather than a rule applicable only to the waters of a specific region. This long-standing principle rests on a number of considerations:

- National rules lie outside the delegated authority of District Commanders.
- National rules issued district by district could increase compliance costs.
- Local rules could lead to potential competitive disadvantages among regions of the country.
- Local rules may interfere with the efficient movement of maritime commerce.
- Local rules could interfere with implementation of treaties.

However, with regard to the operational measures recommended by the RRAT, Coast Guard Headquarters and the First Coast Guard District have worked together in developing appropriate regional requirements proposed in the **Federal Register** [63 FR 54639] on October 13, 1998.

Today, the First Coast Guard District is publishing in the **Federal Register**, those rules establishing a permanent Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District, CGD1–98–151, RIN 2115–AE84. The report of the RRAT is available in the docket for this rulemaking. The history of the RRAT is explained in the preamble to the NPRM, also available in the docket.

4. Two comments reported concern over the lack of a requirement for an operable anchor on all barges, including double-hull tank barges, as recommended by the RRAT. This rulemaking is guided by Federal statute that specified application to single-hull tank barges. Barges with double hulls have built-in safety measures. By adding the emergency retrieval systems, they have sufficient measures in place to protect against grounding and spills. It is also important to note that a number of other new requirements and measures affecting tank barges have been and will be instituted since the NORTH CAPE Spill. They already include navigation safety equipment required on towing vessels since August 2, 1996, and will include new standards for licensing and manning for officers of towing vessels. They may also include measures introduced with the American Waterways Operators' Responsible Carrier Program.

Applicability

Two comments referred to applicability of the proposed rule.

1. One comment questioned the authority of the Coast Guard to impose these requirements on foreign-flag vessels that may enter the territorial seas. Foreign vessels engaged in innocent passage are exempted from the requirements of this rule. However, foreign-flag vessels entering inland waters and ports of the United States are subject to our sovereignty and can be required to comply with the regulations set forth in this rule (as a condition of port entry).

2. One comment suggested that rules developed through accident experience should be applied only to the (type of) region where the accident occurred. Deep-sea routes and Inland waterways are very different environments. Blanket applicability of a rule may affect one region differently from, or more adversely than, another. We agree, and 33 CFR part 155 specifically outlines on which waters these rules apply. Generally, the measures for emergency barge control outlined in this interim rule do not apply on inland waters. The Great Lakes, Long Island Sound, portions of Puget Sound, and the Strait of Juan de Fuca are the exceptions.

Towlines

Four comments dealt with towlines.

1. One comment questioned whether it would be appropriate to have an emergency towline of the same towing characteristics as a line or wire that has just parted. It suggested that we should establish requirements for performance and periodic inspection for both primary and emergency towing wires and lines, particularly those used for tank barges.

2. Two comments suggested that a requirement that an emergency towline have the same characteristics as the primary towline would be difficult to comply with. It suggested that a better solution would be a requirement that the emergency towline be sized appropriately for the horsepower or bollard pull of the towing vessel and be adequate for its intended use.

3. One comment suggested that the language requiring the emergency towline to have the same characteristics as the primary towline is misleading and unnecessarily restrictive.

We agree with these comments, and have reworded this requirement. It is now consistent with the requirements introduced in the final rule, *Navigation Safety Equipment for Towing Vessels* [61 FR 35064 (July 3, 1996)], codified at 33 CFR 164.74, Towline and terminal

gear for towing astern. Useful information about this critical aspect of towing also appears in Navigation and Vessel Inspection Circular (NVIC) 5–92, *Guidelines for Wire Rope Towing Hawsers*, and is recommended by the TSAC for owners, operators, and crews of towing vessels.

Emergency Control Systems

Three comments discussed emergency control systems.

1. One comment suggested that the requirements should be more specific so that they are not interpreted improperly. We agree and have reworded the requirements so they are more specific.

2. One comment suggested a systems approach where the vessel, towline, and barge are considered a single system. The State of Washington specifically addresses this issue in WAC 317–21–345 (available in the docket), and recommends that we consider this approach because it works on the West Coast. We agree; that is why we allow components of the emergency control system on either the towing vessel or the barge. Further, we allow each district to modify operational measures (through Regulated Navigation Areas) to fit conditions that may be peculiar to its own waters and vessels within those waters.

3. One comment recommended revising references to anchor chain to read ''anchor chain or cable'' to reflect the range of industry practice in the coastal oil-transportation industry. We agree, and have changed the wording to include cable.

Voyage Planning

As noted earlier in this interim rule, six comments received discussed voyage planning. It will be a major part of an upcoming SNPRM concerning additional measures to improve safety of towing vessels and tank barges.

Comments Relating to Specific Sections of the CFR

1. *46 CFR 32.15–15.* One comment suggested that the specification for anchor and anchor chain required on barges should allow for cost estimates, especially where classification society approval is mandatory. We agree, and have based the economic analysis, which supports requiring anchoring and retrieval equipment on barges, on the application of the ABS Rules for anchors, chains, and towlines. The Regulatory Assessment (RA) looks at the median size of single-hull tank barges. We have found that the typical anchor on a barge of that size weighs about 5,000 pounds, the length of the cable or chain is 800 feet, and the wire-diameter or link diameter is roughly 1¾ inches. The RA is available in the docket.

2. *33 CFR 155.230(b)(2)(iv).* One comment addressed the annual training on the system for recovery of drifting barges. The comment correctly assessed the intent of the rule, to conduct the drills with barges empty of cargo or in a light condition in waters free from navigational hazards. To make the rule clearer, we are amending 33 CFR 155.230(b)(2)(iv) to specify that drills must include actual operation of retrieval systems, and they should be conducted at the master's discretion in open waters free from navigational hazards so as to minimize the risk to personnel and the environment.

3. *33 CFR 155.230(b)(1).* One comment suggested that the anchoring system prescribed in the proposed rule is inadequate. The comment stated that an effective anchor windlass and other ground tackle should be required instead. We agree. An anchoring system without the components needed to raise the anchor is unlikely to be used as a preventive measure. It is likely to be reserved for use when the barge is *in extremis*, when it may be too late. This interim rule requires a complete anchoring system: power source, winch or windlass, chain or cable, and an anchor.

4. *33 CFR 155.230(b)(1), (2), and (3).* Four comments referred to response measures 1, 2, and 3, as outlined in the NPRM.

(i) One comment suggested that the real value of 33 CFR part 155 is prevention rather than response. The comment suggested that only paragraph (b)(1) [anchor system] would achieve the goal of spill prevention, and urged that we should allow as few as one of the three measures. We disagree. While none of the measures guarantees success in preventing a spill, any one of them, if effective, may prevent a spill.

(ii) The second comment suggested that paragraph (b)(1) should be the only measure allowed because paragraph (b)(2) [retrieval system] lends itself to unmanned barges, and paragraph (b)(3) [Coast Guard approved equivalent system] lends itself to repeated petitions to Commandant (G–MSE) to consider either trip-by-trip exemptions or substitute provisions. We do not agree; such a regulation would fail to fully apply the law, reduce the effectiveness of this rule, and disallow newer, equivalent technology from being considered.

(iii) The third comment stated that paragraphs (b)(1) and (2) are industry standards that are in widespread use, but that an emergency retrieval system should be sized for the barge and the towing vessel and not be restricted to a towline of the same size as that of the towing vessel. As noted earlier in the preamble to this interim rule, we agree and have made changes to reflect this view.

(iv) The fourth comment recommended that operators should be required to carry additional safety gear on tugs (meaning required to carry two out of the three safety measures rather than one). For the reasons stated previously under the section titled ''Regulatory Approach'', we agree. For single-hull tank barges we will require compliance with two of the three safety measures listed; one of the measures must be the anchoring system.

General Comments

1. One comment questioned the validity of the joint report from the Coast Guard and the American Waterways Operators (AWO) concerning fatalities among crews of towing vessels, and requested a copy of the report. The report is available online at *http://www.uscg.mil/hq/g-m/moa/docs/cafata.htm* and in this docket through *http//dms.dot.gov*. It is also available by calling 202–267–1099. To reduce the chances of falls overboard during emergency anchoring we have added a requirement for a safety belt or harness to 33 CFR 155.230(b)(1).

2. Four comments voiced concerns that a tug and barge complying with the proposed rules could still have an accident. We partially agree; no rule can guarantee that accidents will not occur in the future. Our goal with this interim rule is to reduce the chances that another accident, similar to the grounding of the NORTH CAPE, will happen. We believe that this rule can and will do that.

3. One comment requested that we issue an interim regional rule while the long-term regional rulemaking proceeds. Coast Guard Headquarters and the First Coast Guard District are in fact working on appropriate regional requirements.

4. One comment requested that the Officer in Charge, Marine Inspection (OCMI), or Captain of the Port (COTP) should accept, trip by trip, alternative technical or operational measures, alone or in combination, that will provide an equivalent degree of protection to that offered by Measure 1. We do not agree. For single-hull tank barges operating in the waters specified, the interim rule will require an anchoring system. It also will require an emergency retrieval system or some equivalent measure(s). In essence, Measure 3 may substitute for Measure 2 with approval of the Commandant.

5. One comment stated that it was good that we were taking steps to improve the safety of towing vessels and tank barges but that it was a disappointment that we missed the congressionally mandated deadline.

6. One comment relayed a concern that an annual drill on retrieval of barges may be inadequate to maintain the proficiency of the crew because of the rate of turnover among personnel. We disagree. Barge retrieval systems are relatively simple in makeup and use. They do not call for skills beyond those generally used in the day-to-day operations of tugs. The turnover among senior crewmembers, who direct emergency evolutions, is not high. The requirement remains as proposed. We believe the best way a company can ensure the proficiency of its crews in barge retrieval is to assign the responsibility of supervising the drills to one of the senior crewmembers. This may be the master or mate of the tug.

7. Five comments stated that the proposed rules failed to require a combination of devices necessary to ensure the stoppage of a runaway barge (for example, retrieval devices to complement anchors). We agree, and the interim rule requires the placement of both anchors and retrieval devices or other measures on all single-hull tank barges.

8. One comment asked whether making the operator of the anchoring system confer with the master regarding the appropriate length of chain to be used is a good practice. We believe it is. The master of the tug should be familiar with the area his or her tug and tow are transiting, including bottom conditions. The master will have access to charts and equipment to assess the bottom and the depth. The master should share this information with the person on the barge conducting the anchoring. The wording from the NPRM persists in this interim rule.

9. One comment suggested that meeting the requirement for a functioning means of releasing the anchor that does not endanger operating personnel is impossible, because there is always some chance of harm to the personnel who operate it. We agree, and have changed the wording.

10. One comment suggested that there should be anonymous polling of tug masters and tug crews concerning fatigue and work hours, as well as the impact on jobs if masters refuse to go out in bad weather. The report of the RRAT also touched on fatigue and work hours. We have forwarded this suggestion to the TSAC for consideration.

11. One comment questioned whether it would be reasonable to have an ordinary seaman thoroughly familiar with the operation of an anchor. It suggested that one able seaman, or in some cases two able seamen, thoroughly familiar with the anchoring operation, should suffice. We agree that an experienced crewmember should operate the anchoring system. However, crews of towing vessels are small, and we believe having all of their crew trained and familiar with the emergency barge control system also enhances safety.

12. Two comments recommended that all barges (non-self-propelled tank vessels), including unmanned barges, carrying oil or other hazardous cargoes between ports must be equipped with working anchoring systems. We partly agree with this assessment. We are requiring anchoring systems on all single-hull tank barges operating either offshore or on the waters specified in 33 CFR 155.230(a).

13. One comment supported the Coast Guard's determination that the high seas and territorial seas as defined in 33 CFR part 2 would be equivalent to the statutory concepts of open ocean and coastal waters respectively for the applicability of the proposed rules. We partly agree; this interim rule applies on the territorial seas as defined in 33 CFR part 2, and on the 9-mile band of ''open ocean'' or high seas adjacent to the seaward boundary of the territorial seas of the U.S.

14. One comment questioned the definition of a permissively manned barge. It asked if the operator of a barge deemed it necessary that persons should be placed on a barge for its operation, whether the added complement would count as the barge's required manning. This comment also asked how the provisional authority of the OCMI differs from the statement of the Secretary regarding the necessary complement. The OCMI exercises authority delegated by the Secretary to determine whether a barge should be manned. The decision depends on safety considerations. Maintenance persons with no duties related to the navigation of the vessel may be permitted by the OCMI without, in effect, increasing the manning of the barge.

15. One comment suggested that the proposed rules were not clear in distinguishing between tank vessels and Oil Spill Response Vessels (OSRVs). It asked that we clarify this in a later rulemaking. We do not see the need, as OSRVs are not tank barges, and section 155.230 makes clear that this interim rule applies to tank barges and vessels towing them on the waters listed.

16. One comment stated that, unlike Rhode Island law, the proposed rules would not require tug escorts, or provide any incentive to accelerate the phase-in of double hulls scheduled for the Northeast. These issues are outside the scope of this rule; however, they are addressed in the regional rulemaking for the waters of the Northeast, published in the **Federal Register** on October 13, 1998 (63 FR 54639). The report of the RRAT recommends that we require twin screws and twin engines for most vessels towing tank barges. For single-screw towing vessels, it recommends that we require tug escort or assist. Owners of double-hull tank barges need not install anchoring systems, whereas owners of single-hull tank barges must install them to operate on the waters specified in this interim rule. While this rule may have the effect of providing an incentive to accelerate the phase-in, it is not the intention of the Coast Guard to change the deadline for double hulls established by Congress in the Oil Pollution Act of 1990 (OPA 90).

17. One comment suggested that we should not include recognized classification societies other than the American Bureau of Shipping (ABS) in this context, because it is highly unlikely that any other standards will be equivalent to those of ABS. This comment suggested that owners or operators wishing to use other standards can use the general equivalency provisions case by case. We disagree; in keeping with the Alternate Compliance Program (see 62 FR 67525 of December 24, 1997, amending 33 CFR Part 151 and 46 CFR Parts 1, 8, 31, 69, 71, 91, 107, 153, and 154), where foreign or international standards are evaluated and may be accepted, Commandant (G–MSE) will decide whether the standards are equivalent. The wording in the NPRM does not change in this interim rule.

18. One comment recommended that the Coast Guard apply its rules for certifying inspected vessels and for manning to uninspected tugs. We disagree; these recommendations are beyond the scope of this rulemaking. A separate interim rule concerning licensing and manning for officers on uninspected towing vessels (CGD 94–055) is nearing completion. The Coast Guard has considered inspection of towing vessels that are now uninspected, and has rejected it as too costly for government when compared to the estimated reduction in casualties. Careful analysis of recent casualties such as that of the NORTH CAPE supports the approaches embodied in

our PTP program and in the AWO's Responsible Carrier Program (RCP). These efforts will improve the safety of uninspected towing vessels by focusing attention on the area most often identified as the root cause of accidents-the human element. We recognize that the actions of a vessel's crew are directly related to its owner's practices, policies, and procedures.

19. One comment suggested that we need to consider the differences between ocean-going tugboats and inland towboats. We agree; and we have, by generally applying this interim rule to ocean-going tank barges and the vessels towing them. This rule applies to vessels towing tank barges seaward of the baseline of the territorial sea, excepting only the Great Lakes, Long Island Sound, and the Strait of Juan de Fuca and portions of Puget Sound.

Incorporation by Reference

Material that will be incorporated by reference is listed in § 155.140. The material is available for inspection where indicated under **ADDRESSES**. Copies of the material are available from the sources listed in § 155.140. The Coast Guard has submitted this material to the director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This interim 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. It has not been reviewed by the Office of Management and Budget under that Order. However, it is significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because of public interest generated by the NPRM and has been reviewed by the Office of the Secretary.

An interim Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary of the Assessment follows; unless otherwise indicated, cost and benefit data are expressed in 1998 end-of-year values:

Summary of Benefits

Measures published in this rule are expected to yield a net cost effectiveness of $365 per barrel of oil spillage averted. This prevention cost compares favorably, for example, with property damage and actual restoration and cleanup costs (excluding intangibles and transfer costs such as fines, judgments resulting from litigation, and insurance benefits paid) incurred thus far as a result of the 20,000-barrel spill from the barge NORTH CAPE in January of 1996. The costs of that spill thus far total about $50.2 million, which averages about $2,550 per barrel spilled. This per-barrel cost for only one spill is nearly seven times the per-barrel costs of this rule to avert similar events industry-wide.

The table following this paragraph illustrates the calculation of net cost effectiveness from total quantifiable costs and benefits resulting from implementation of this rule. The benefits are normalized into cost effectiveness ratios to reflect the cost per unit of oil pollution averted. Here's how: the total estimated dollar cost of this rule is shown on Line (1); total property damage averted, a benefit expressed in dollars, is shown on Line (2) and is subtracted from total dollar costs to yield a net cost, which is shown on Line (3); pollution averted, the principal benefit, which is expressed in barrels of oil not spilled, is shown on Line (4); and the bottom line shows the net cost from Line (3) divided by the pollution averted benefit from Line (4) to yield an expression of cost effectiveness shown in units of net discounted dollars per discounted barrels of oil not spilled. This procedure permits us to compare pollution and property damage benefits together in terms of net cost-effectiveness.

TABLE—Control Measures for Tank Barges (Barge Anchoring and Retrieval): Cost effectiveness expressed in dollars per barrel of oil not spilled

Type of benefits & costs	Quantity	Units
(1) Cost of this rule	$ 9,381,255	Dollars (PV).
(2) *Property damage-averted*[1]	*5,657,792*	*Dollars (PV).*
(3) (1) minus (2) Net cost	3,723,463	Dollars (PV).
(4) *Pollution averted*[2]	*10,205*	*Barrels of oil unspilled (PV).*
(3)÷(4) **Net cost effectiveness**	**365**	**Dollars per barrel unspilled.**

NOTE: benefits, shown on lines (2) and (4), are italicized. Net cost effectiveness is shown in bold.
[1] Damage to vessels and equipment.
[2] Oil not spilled overboard into bodies of water.

The principal benefit of this rule is protection against oil spillage and property damage that may result when a tow line to a tank barge parts or its towing vessel otherwise loses control over the tank barge, permitting it to run aground. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled and averted damage to property such as vessels and machinery, measured in dollars. The latter are secondary benefits. During the period 1999–2014 inclusive, this rule will avert 10,205 barrels of oil spillage and $5.7 million of property damage.

To construct the benefits analysis, the Coast Guard employed its Marine Safety Management System (MSMS) database and underlying reports to provide a reasonable approximation for modeling marine casualties and pollution incidents. The model postulates that if requirements in this rule were not enacted, the normalized frequency and severity of pollution and damage due to towline ruptures would continue at about the same magnitude as during a representative five-year base period which the Coast Guard identified as 1992–1996. This period captures the post-Oil Pollution Act (OPA 90) maritime environment; the Coast Guard considers the period long enough to capture a representative history, while short enough to be reasonably current. Reports for the 1992–96 period are largely complete. A 1992–1997 period was considered and not chosen because 1997 report histories remain open and we consider them too preliminary to present a fair representation.

The analysis recognized that a range of variables extant in the marine interface of people, vessels, machines, and the sea, may result in the

occurrence of some of the casualties targeted by this rule after it is in force. Accordingly, the Coast Guard assembled an analytical team comprised of marine inspectors, program analysts, and economists, who reviewed data and individual case files, and who obtained consultations from a range of subject matter experts. This team proceeded through a multi-step probabilistic risk assessment that considered the combined and interactive effects of this rule and several other related rules that are in effect or mandated by law for completion in the near future. The analysis yielded a probability of 22 percent that installed and working powered anchoring systems and emergency retrieval devices on the affected tank barge population—both single-hull and double-hull vessels—would have prevented or mitigated casualties, pollution, and damage resulting from that particular casualty.

The benefits analysis uses the OPA 90-scheduled phase-out of tank barge capacity as a proxy for the reduction of exposure and spill potential, an innovation that helped to guard against the overstatement of benefits, since during the 1998–2014 period and prior to the final phase-out of all single-hull tank barges, single-hull tank barge capacity, which represents the industry segment primarily affected by this rule, will likely decrease at a much sharper rate than will the actual count of available in-service single-hull tank barges. This is because the OPA 90-scheduled phase-out favors longevity for the smallest single-hull tank barges.

Capacity weighting based on the phase-out schedule and probabilities of effectiveness are used to calculate both primary and secondary benefits. In addition, the secondary benefits, averted dollar damages to property such as vessels and machinery, are reflated from base period calculations to 1998 end-of-year values, using a Consumer Price Index-based price index adjustment factor.

The Coast Guard considered several non-quantifiable benefits. No injuries, deaths, or missing persons were recorded in base period casualty reports. However, the types of casualties addressed in this rule, particularly ones that occur in inclement weather, are inherently dangerous and a future casualty of the type that will be mitigated by this rule could otherwise result in some deaths and injuries. Additionally, while the oil pollution benefit pool analyzed during the assessment of this rule totaled slightly less than 39,000 barrels of oil during the base period, the upper bound of oil at risk in those casualties—the total cargo of oil aboard affected tank barges when accidents occurred—exceeded 180,000 barrels. Future casualties of the type that will be mitigated by this rule could otherwise result in far more serious spills than are indicated in the regulatory assessment.

Summary of Costs

Tank barge and towing industry firms, along with a few state and local governments, will incur costs primarily to purchase, install, and maintain powered emergency anchoring systems and owner/operators' choices among emergency retrieval systems on certain tank barges and in some instances, towing vessels. The Government will incur modest incremental inspection costs. Costs of this rule will total $9.4 million. We subtracted secondary benefits from the total cost to yield a $3.7 million net cost.

Whereas we adjusted benefit calculations to reflect OPA 90-scheduled phase-out of actual tank barge capacity to approximate declining exposure and spill volume potential, we adjusted cost calculations to accommodate the phase-out of hulls rather than volume, as the purchase, installation, and maintenance of equipment required by this rule is quantified on a per-hull basis.

Initial costs are incurred by owner/operators of tank barges and their towboats between 90 days and two years following the effective date of this rule. Initial costs are expected to total between $7.93 million and $7.99 million. Fleet-wide purchase and installation costs for powered emergency anchoring systems will total $7.8 million, 98 percent of the total; and, fleet-wide emergency retrieval system costs will range between $120,000 and $168,000, depending on how individual owner/operators weigh the lower initial investment required for emergency tow wire systems against lower maintenance costs for hook retrieval systems. A sensitivity analysis contained in the regulatory assessment showed that the decision, if made on an economic basis, will depend on the particular deal that the owner/operator can drive and the remaining life of the barge. Additionally, qualitative decision factors include the availability of up-front capital and personal or corporate preferences.

Recurring costs include training drills, maintenance, repair, and in some cases, replacement of components. The present value of these costs total $751,000 for powered anchoring systems, and range between $55,000 for hook retrieval systems and $140,000 for emergency tow wire systems. In addition, recurring incremental costs borne by the Coast Guard for inspections and law enforcement are expected to total less than $4,500 on a present value basis.

Double-hull tank barges are already in compliance with this rule as a result of their compliance with other existing requirements. This rule is expected to impact 180 single-hull tank barges operating in open ocean or coastal waters. We believe that many of these barges are already in compliance. The costs that we report account for our estimates that of the 180 barges, 97 barges will need to install powered anchoring systems and 24 barges or towing vessels will need to install an emergency retrieval system. The Coast Guard does not expect economic abandonment of any barges as a result of this rule. The per-barge costs are relatively low and the first phase-out among the affected tank barges does not occur until January 1, 2004. A two-year phase-in for the relatively more costly powered anchoring system installation obviates the need for an extra, out-of-cycle dry-dock period for the installation. The majority of tank barges experiencing new costs as a result of this rule are eligible to remain in service until 2015.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. Under sections 202 and 205 of the UMRA, the Coast Guard generally must prepare a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, an analysis under the UMRA is necessary.

While several State and local governments operate some tank barges, the majority of affected tank barges are owned and operated by entities in the private sector. This interim rule does not now directly affect tribal governments. The total burden of Federal mandates imposed by this rule ranges from $9.3 million–$9.4 million and will not result in annual expenditures of $100 million or more. Therefore, sections 202 and 205 of the UMRA do not apply.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. ''Small Entities'' include 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.

An analysis of impacts on small entities for this rule is included in the regulatory assessment; it is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Double-hull tank barges are now in compliance with this rule's equipment requirements in connection with their compliance with other existing requirements. Most towing vessels either are now in voluntary compliance with requirements or will choose an option that shifts an equipment purchase requirement to a few barges that are not now in voluntary compliance. As a result, most towing vessels are not expected to incur compliance costs.

The impact of this rule will fall primarily on single-hull tank barges and perhaps, several towing vessels. The rule will require: (1) owners and operators of tank barges that do not already have emergency anchoring systems to purchase and install them; (2) owners and operators of all towing vessels, regardless of size, to purchase and carry emergency retrieval systems if they do not already have them; and (3) towing vessel masters to learn—and train crews—to deploy anchors and operate retrieval systems. Owners and operators of tank barges and towing vessels are responsible for both inspecting their respective systems and maintaining them in good working order. The purpose is to decrease the probability of barge breakaways and the oil spillage, pollution, and property damage that could result.

The Coast Guard is establishing a two-year phase-in period for the anchoring system requirements. Although the Coast Guard received no comments on the NPRM concerning small entities, we recognize that some of the single-hull tank barge fleet are likely owned and operated by small firms not dominant in the industry. Barges affected by this rule must undergo a drydock inspection twice during a five-year period, no less than two years apart. The two-year phase-in permits barges to undergo the installation of a powered anchoring system during normal yard availability. They may thus avoid incurring the extra cost of both a third drydocking during a five-year period and opportunity costs of lost revenue during a third drydocking. The long phase-in will thus permit most small entities to explore the market, plan, and schedule installations during normal shipyard availability. It reduces the pressure for small entities to compete with major operators for yard availability, a competition that would occur if, for example, the anchoring system phase-in matched the 90-day phase-in for the other requirements included in this rule.

Small owners and operators of single-hull tank barges are affected by the OPA 90-mandated phase-out. However, we believe that smaller barges affected by this rule are the ones most likely to be owned by small owners and operators, many of whom would have the opportunity to amortize purchase and installation costs associated with the rule through the end of the year 2014. The 146 relatively small barges among the 181 barges directly affected by this rule may remain in service until January 1, 2015, the end of the phase-out period, making them the last vessels to be phased out under OPA 90 requirements.

The equipment required by this rule is in common use in the industry and does not represent novel or untried technology. Some small entities are likely to be among the majority of owners and operators who already meet some or all of the requirements. This rule will result in a financial burden for some of those owners and operators who must purchase and install equipment. The costs are fairly low in comparison with the replacement cost of a tank barge, very low in comparison with the replacement cost of a towing vessel, and extremely low in comparison with the damage that could be caused by, and the liability that could result from, an accident and resultant spill.

The crafting of this rule so that many affected vessels are already in compliance, and the two-year phase-in period for installation of retrievable anchoring systems, together provide important accommodations to, and significant flexibility for, small entities and others affected by this rule.

Accordingly, the Commandant certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that this interim rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity, and that this rule will have a significant economic impact on your business or organization, please submit comments (see **ADDRESSES**) explaining why you think it qualifies and in what way, and to what degree, this rule will affect it economically.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please call Mr. Robert Spears, telephone 202–267–1099.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This interim rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Federalism

As this is a statutorily mandated rulemaking, under paragraph IV.C.1 of the Department of Transportation Guidance on Federalism of February 10, 1988, this rule does not require a Federalism Assessment. However, it may preempt portions of State law on towing vessels and tank barges. For instance, on June 30, 1997, Rhode Island enacted a law entitled the ''Tank Vessel Safety Act (46 R.I. Gen. Laws § 12.6).'' That Act promulgated the recommendations of the RRAT. However, these recommendations cover areas addressed by the applicable provisions in the Coast Guard Authorization Act of 1996 or the measures in this rule. Consequently, when this rule goes into effect, it may preempt certain provisions of the Rhode Island law, specifically 46 R.I. Gen. Laws §§ 12.6–9, or of other States' laws. A preemption analysis will be conducted in conjunction with the publication of the Final Rule, which may reflect changes from this interim rule because of comment by the public.

Barges Carrying Non-Petroleum Oil

The Edible Oil Regulatory Reform Act (Pub. L. 104–55, 109 Stat. 546–547

[1995]) requires federal agencies to differentiate between classes of oils and consider different treatment of these classes, if appropriate. The Coast Guard has determined that bulk spills of animal fat, vegetable oil, and other non-petroleum oil can be damaging to the environment; therefore, tank barges carrying these products must comply with this IR.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that under Figure 2–1, paragraphs (34)(c) and (d) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 155

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

46 CFR Part 32

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 and 46 CFR part 32, as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 and the note following it are revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Amend § 155.140 by revising paragraph (b) introductory text and adding the following standard in alphabetical order to read as follows:

§ 155.140 Incorporation by reference.

* * * * *

(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:

American National Standards Institute, Inc. (ANSI) 11 West 42nd Street, New York, NY 10036

ANSI A10.14—Requirements for Safety Belts, Harnesses, Lanyards and Lifelines for Construction and Demolition Use, 1991—155.230

* * * * *

3. Revise § 155.230 to read as follows:

§ 155.230 Emergency control systems for tank barges.

(a) *Application.* This section applies to tank barges and vessels towing them on the following waters:

(1) On the U.S. territorial sea [as defined in Presidential Proclamation 5928 of December 27, 1988, it is the belt of waters 12 nautical miles wide—the shoreward boundary is the territorial sea baseline].

(2) In Great Lakes service.

(3) On Long Island Sound. For the purposes of this section, Long Island Sound includes the waters between the baseline of the territorial sea on the eastern end (from Watch Hill Point, Rhode Island, to Montauk Point, Long Island), and a line drawn north and south from Premium Point, New York (approximately 40°54.5′N, 73°45.5′W), to Hewlett Point, Long Island (approximately 40°50.5′N, 73°45.3′W), on the western end.

(4) In the Strait of Juan de Fuca.

(5) On the waters of Admiralty Inlet north of Marrowstone Point (approximately 48°06′N, 122°41′W). This section (§ 155.230) does not apply to foreign vessels engaged in innocent passage (i.e., not entering or leaving a U.S. port).

(b) *Safety program.* If you are the owner or operator of a single-hull tank barge or of a vessel towing it, you must adequately man and equip each vessel of this kind so that its crew can anchor the barge by employing *Measure 1* in paragraph (b)(1) of this section. Moreover, the crew and vessel together must be capable of arresting or retrieving the barge by employing either *Measure 2* or *Measure 3* as described in paragraphs (b)(2) and (3), respectively. If you are the owner or operator of a double-hull tank barge, you must equip it and train its crew, or if it is unmanned the crew of the vessel towing it, so that crew can retrieve the barge by employing *Measure 2* in paragraph (b)(2).

(1) *Measure 1.* Each single-hull tank barge, whether manned or unmanned, must be equipped with an operable anchoring system that conforms to 46 CFR 32.15–15. Because the anchoring system will also serve as an emergency control system, the owner or operator must ensure that the following criteria are met:

(i) *Operation and performance.* When the barge is underway—

(A) The anchoring system is ready for immediate use;

(B) One person, along with one other crewmember to assist if needed, can operate the system and deploy the anchor;

(C) While preparing to deploy the anchor, the operator of the system must confer with the master of the towing vessel regarding appropriate length of cable or chain to use; and

(D) Each operator of the system must wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed structure such as a welded padeye. Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14.

(ii) *Maintenance and inspections.* Each anchor, cable, chain, and hawser must be inspected at the time of class survey or inspection for certification. The inspection must cover the features listed under *operation and performance* in paragraph (b)(1)(i) of this section.

(iii) *Training.* On each manned barge, every crewmember must be thoroughly familiar with the operation of the anchoring system. On each vessel towing an unmanned barge, every deck crewmember must be thoroughly familiar with the operation of the anchoring system installed on the barge.

(2) *Measure 2.* Each owner or operator of a barge or towing vessel described in paragraph (a) of this section employing an emergency retrieval system to regain control of a barge must ensure that the following criteria are met:

(i) *Design.* The system must use an emergency towline with *at least* the same pulling strength as required of the primary towline. The emergency towline must be available on either the barge or the vessel towing it. The towing vessel must have on board equipment to regain control of the barge and continue towing (using the emergency towline), without having to place personnel on board the barge.

(ii) *Operation and performance.* The system must use a stowage arrangement that ensures the readiness of the emergency towline and the availability of all retrieval equipment for immediate use in an emergency throughout the voyage.

(iii) *Maintenance and inspection.* The system must be inspected annually by the owner or operator. This inspection can take place at the time of class survey or during an inspection for certification.

It must test the availability of the retrieval system and verify the maintenance of the emergency towline.

(iv) *Training.* Retrieval drills must be conducted within three months after the master or mate responsible for supervising barge retrieval begins employment on a vessel that tows tank barges, and at least annually thereafter. Each drill must—

(A) Include actual operation of a retrieval system to regain control of a barge; and

(B) Be conducted at the master's discretion, under the supervision of the master or mate responsible for barge retrieval, and in open waters free from navigational hazards so as to minimize risk to personnel and the environment.

(3) *Measure 3.* Each owner or operator of a barge or towing vessel described in paragraph (a) of this section may invoke this paragraph as a substitute for Measure 2 in paragraph (b)(2). First, you must ensure that your alternative measure, system, or combination of measures used to arrest or retrieve a barge is approved by the Commandant (G–MSE). To be approved, it must provide protection against grounding of the tank vessel comparable to that provided by the systems and measures described in paragraph (b)(1) or (2) of this section.

TITLE 46—SHIPPING

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

4. The authority citation for part 32 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

5. In § 32.15–15, revise paragraphs (a) and (d); and add new paragraphs (e) and (f) to read as follows:

§ 32.15–15 Anchors, Chains, and Hawsers-TB/ALL.

(a) *Application.* Use the following table to determine which provisions of this section apply to you:

If you own . . .	And . . .	Then . . .
(1) A tankship or a manned seagoing barge	It was constructed before June 15, 1987,	It must meet the requirements of paragraphs (d) and (f).
(2) A tankship or a manned seagoing barge	It was constructed on or after June 15, 1987,	It must meet all the requirements of this section except paragraphs (d) and (e).
(3) An unmanned barge equipped with anchors.		It must meet the requirements of paragraphs (e) and (f).

* * * * *

(d) *Tankships and Barges Constructed Before June 15, 1987.* For each tankship or manned seagoing barge constructed before June 15, 1987, except a barge specified in paragraph (e) of this section, the equipment previously accepted or approved is satisfactory for the same service so long as it is maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection (OCMI). If the service of the vessel changes, the OCMI will evaluate the suitability of the equipment.

(e) *Barges Equipped with Anchors to Comply with 33 CFR 155.230(b)(1).* Each barge equipped with an anchor, to comply with 33 CFR 155.230(b)(1), must be fitted with an operable anchoring system that includes a cable or chain, and a winch or windlass. All components of the system must be in substantial agreement with the standards issued by the American Bureau of Shipping (ABS). The current standards of other recognized classification societies are acceptable if they are approved by the Commandant (G–MSE).

(f) *Operation and Performance.* Each anchor, exposed length of chain or cable, and hawser must be visually inspected before the barge begins each voyage. The anchor must be stowed so that it is ready for immediate use in an emergency. The barge must have a working means for releasing the anchor that can be operated safely by one or two persons.

Dated: December 21, 1998.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 98–34415 Filed 12–24–98; 8:54 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–98–151]

RIN 2115–AE84

Regulated Navigation Area: Navigable Waters Within the First Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent Regulated Navigation Area (RNA) within the navigable waters of the First Coast Guard District to increase operational safety for towing vessels and tank barges. This rulemaking implements section 311(b)(1)(A), Pub. L. 105–383, Coast Guard Authorization Act of 1998, and requires four measures for towing vessels and tank barges operating in the waters of the Northeastern United States: positive control for barges, enhanced communications, voyage planning, and areas of restricted navigation. These measures should reduce the risk of oil spills from the many tank barges operating in the waters of the region, and so to reduce the risk of environmental damage to the unique and extremely sensitive marine environment.

DATES: This final rule is effective January 29, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210–3350.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Rich Klein, c/o Commander (m), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02210–3350; telephone 617–223–8243.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 13, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area: Navigable Waters Within the First Coast Guard District'' in the **Federal Register** (63 FR 54639). On November 13, 1998, the Coast Guard Authorization Act of 1998 (Act) was enacted into law. Section 311 of the Act requires the Commandant, under

delegated authority from the Secretary of Transportation, to promulgate regulations for towing vessel and tank barge safety. The First District Commander, under authority delegated from the Commandant, is addressing those areas that are within his authority, by creating a regulated navigation area. The Coast Guard received 12 letters commenting on the proposed rulemaking. No public meeting was requested, and none was held.

Background and Purpose

This final rule will improve the navigational safety for towing vessels and tank barges operating in the waters of the Northeastern United States. Between January 1992 and December 1996, there were 289 marine casualties involving tank barges in the First Coast Guard District. Not all of these casualties were major or significant, but several resulted in oil spills.

During 1996 and 1997, there were 12 marine casualties involving engine failure with tugs while they were towing tank barges in the waters of the First Coast Guard District. At least four of those tank barges were loaded with a combined cargo totaling about 21 million gallons of petroleum products. In each of the 12 instances, the towing vessel was able to mitigate the casualty by switching propulsion to the second engine, which was sufficient to control the barge. None of the casualties resulted in any pollution.

Development of the Report of the Regional Risk Assessment Team (RRAT)

On June 5 and 6, 1996, the Commander of the First Coast Guard District hosted a two-day Workshop on Safety of Towing Vessels and Tank Barges at the Massachusetts Maritime Academy. Nearly 150 people gathered to discuss goals for the safety of the marine environment, and economic and operational considerations of the tank barge industry in the Northeast. The participants represented the Coast Guard, the industry, the States of New York, Connecticut, Rhode Island, and Maine, the Commonwealth of Massachusetts, and various environmental interests.

The RRAT was chartered and established by the American Waterways Operators and Coast Guard National Quality Steering Committee on July 10, 1996. The 25-member team, with similar representative stakeholders from the two-day workshop, conducted a risk assessment of the tank barge transportation network in the Northeastern United States. The RRAT's report, entitled *REGIONAL RISK ASSESSMENT OF PETROLEUM TRANSPORTATION ON THE WATERS OF THE NORTHEAST UNITED STATES*, and completed February 6, 1997, examined current operational and navigational practices for towing vessels and tank barges operating in the Northeast. Although it did not evaluate the measures for cost-effectiveness, it developed ten measures to improve the safe navigation of these vessels, eight of which were recommended for rulemaking. This rule codifies four of those eight measures that are within the First District Commander's authority to address by the rulemaking. The remaining recommendations for rulemaking will become the subjects of national rulemaking.

This rule takes a regional approach responsive to the particular risks inherent in the transportation of petroleum products on the waterways in the Northeastern United States. The network of sounds, estuaries, coastal ponds, and shallow coastal shelves hosts one of the most prolific habitats for marine life in the nation. This sensitive region contains 4 of the 20 Estuaries of National Significance, designated by Section 320 of the Federal Clean Water Act—Long Island Sound, Narragansett Bay, Buzzards Bay, and Casco Bay—and 5 of the 22 National Estuarine Research Reserves established to monitor the health of the nation's most valued estuaries. Moreover, the shelves encompassing the Great South Channel, Massachusetts Bay, and Cape Cod Bay provide the seasonal habitat for the Northern Right Whale, one of the world's most endangered species of whale with a population of only about 300. One of the whale's primary food sources, plankton, is particularly susceptible to damage from oil spills.

In addition, the fishing grounds of the Northeastern United States are among the most productive in the world. It is estimated that over 25,000 vessels are employed in the Northwest Atlantic Ocean fisheries trade. The threat to the productive fishing grounds from a tank barge spill further supports the need for this rule.

In the aftermath of the NORTH CAPE oil spill as described in the NPRM, several states in the Northeast drafted or enacted legislation to regulate the tank barge industry. The Rhode Island legislature enacted an Oil Spill Pollution Prevention and Control Act, which it amended with a Tank Vessel Safety Act (codified as Chapter 32 of its Public Laws). Further, Maine officials are considering a legislative initiative to regulate the petroleum transportation industry. The states' differing legislative initiatives might result in inconsistent regulation of the industry.

The several operating conditions codified in this rule will reduce the risks to the marine environment posed by tank barges transporting oil in the region without imposing undue economic burden on the industry.

Discussion of Comments and Changes

The Coast Guard received 33 comments on the NPRM, contained in 12 individual letters to the docket.

General

Four comments stated that the rulemaking was a step in the right direction. They noted that this rule codified some of the already-standard practices being used by prudent tugboat operators. They also noted that the rule would help close the safety gap that exists when a tug, not normally engaged in the petroleum trade, must move a barge carrying petroleum products.

Three comments stated that the proposed rule addressed only four of the eight operational measures contained in the recommendations of the RRAT. The comments noted that the RRAT made many recommendations, some targeted for inclusion in a regional rule applicable to the entire First Coast Guard District. The comments urged that we adopt all of the regulatory recommendations of the RRAT. We acknowledge the comments, but find that adoption of the remaining four recommendations is beyond the scope of this rulemaking. Those remaining recommendations for rulemaking from the RRAT are Manning, Anchoring and Barge Retrieval Systems, Navigation Safety Equipment, and Crew Fatigue: The Human Factor. While the RRAT considered the remaining recommendations also suitable for regional rulemaking, they are not authorized subjects for an RNA, and are thus beyond the authority of the First District Commander. On a national level, Coast Guard Headquarters is also publishing today in the **Federal Register**, rules on emergency control measures for tank barges, USCG–1998–4443, RIN 2115–AF65.

Two comments noted the Coast Guard is taking a regional approach for four of the eight measures recommended by the RRAT, and that the remaining four measures would be addressed in a future national rulemaking. The same two comments expressed concern about efforts by individual States to enact their own requirements on safety and the environment, thereby creating a confusing patchwork of rules. They strongly supported the Coast Guard's efforts to implement new requirements

on a national basis. The comments recommended that the Coast Guard minimize the potential for varying requirements or interpretations of them. The commenters agree that the enhanced communications requirements and navigational restrictions are appropriate for regional rulemaking. They also recommend that positive control of barges and voyage planning be addressed on a national, rather than a regional, basis. We agree with the comment that the rulemaking for enhanced communications and navigation restriction areas are appropriate for regional rulemaking, however, due to the unique environment of the region we disagree that positive control of barges and voyage planning should be addressed by national rulemaking. As such, section 311 of the Coast Guard Authorization Act of 1998 requires the Coast Guard to implement these regional rules with a detailed explanation of any RRAT recommendation that is not adopted.

One comment noted that two of the proposed measures showed some promise for their potential ability to allow increased awareness of and protection to endangered and threatened species. It recommended that the section on voyage planning require vessel operators to review relevant sections of the Coast Pilot that pertain to Right Whales and to participate in the program called the Right Whale Early Warning System (EWS). The comment also questioned whether we had considered including some measure in the rule that would aid in the protection of the critical habitat in the Great South Channel which, like Cape Cod Bay, is a critical habitat for the Northern Right Whales. The Coast Guard is committed to utilizing its existing authorities to carry out programs that conserve and protect endangered species. These regulations will beneficially effect endangered species and their critical habitats by promoting safe, environmentally sound vessel operations in marine environment in general, including protected species and their habitat. This final rule does require voyage planning within the First District to include review of the Coast Pilot for the area to be transited. The Coast Pilots covering those areas with concentrations of whales have been updated with information concerning the Northern Right Whales. Although the Great South Channel is beyond the scope of this rulemaking, EWS and Coast Pilot information available for that area will be available to commercial vessels. The EWS is an important protective measure for endangered whales. Currently, the EWS includes the use of information from private and Coast Guard aircraft that conduct aerial surveys over areas of high use by endangered whales. The position of whales detected by the aircraft is reported to a shore-based unit for further dissemination via notice to mariners or NAVTEX. Coast Guard vessels routinely report whales sightings to operational commanders for further rebroadcast. As currently configured, however, the EWS does not involve the use of private vessels for reporting sightings because of concerns including the lack of resources to process and validate such information. Validation was considered a key issue because commercial vessels do not typically have observers trained in marine mammal identification and are required to keep their distance (at least 500 yards) from the whales. This comment will be provided to the New England Right Whale Recovery Implementation Team, which provides guidance to the EWS, for their consideration. Information gathered by the EWS is available to commercial vessels and they will be advised how to access that information as part of the upcoming Mandatory Ship Reporting System (MSR). The Coast Guard Authorization Act of 1998 contains new legislative authority to implement and enforce two MSRs, consistent with international law, for Cape Cod Bay, Massachusetts Bay and Great South Channel. The MSR is an important protective measure to conserve endangered species such as the Northern Right Whale and is designed to involve large commercial vessels. The MSR system, in part, will pass important information to the ships operating at sea before those ships enter critical habitat or other areas of reported high concentrations of whales. The new MSR authority will be implemented by separate regulations being developed by the Coast Guard, with assistance from the National Marine Fisheries Service which has primary responsibility for administration of the Endangered Species Act for endangered whales. For these reasons, no change has been made to the final rule due to these comments.

One comment objected to the reference in the NPRM that, upon promulgation of this final rule certain state laws enacted under the Rhode Island Tank Vessel Safety Act, 46 Rhode Island General Laws (R.I.G.L.) § 12.6 (Act) would become null and void, as they would be preempted by the new federal regulations. The comment stated that the Act adopted, nearly verbatim, the language of the RRAT regulatory recommendations. The comment stated that until all the RRAT recommendations are adopted, the supersession provision (46 R.I.G.L. § 12.6–12) is inoperative, and that subsection by subsection supersession is not encompassed within the Act. We disagree.

In an analogous circumstance, Courts interpreting the doctrine of Federal preemption consider, as a matter of course, specific subsections of state legislative and regulatory action for preemption, while allowing other subsections to stand. *See Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151 (1979); *International Association of Independent Tanker Owners (Intertanko)* v. *Locke*, 148 F.3d 1053 (9th Cir. 1998). More importantly, the operation of the Rhode Island supersession statute, while reflective of the Rhode Island Legislature's desire for, and willingness to accede to Federal regulation, is not determinative in a Federal preemption analysis. Therefore, the analysis of the preemptive effects of this final rule remain largely unaltered from those described in the Notice of Proposed Rulemaking.

Positive Control for Barges

One comment supported the requirement for twin-screw towing vessels to accompany single-hull petroleum-laden barges, and also noted that tank barges meeting the definition of double-hull vessels in 33 CFR 157.03 are not subject to the twin-screw requirement. However, the comment noted that the proposed rule did not discuss double-bottom barges or its applicability to them. The comment mentioned that the RRAT discussed double-hull and double-bottom barges and concluded that both offered enhanced environmental protection. It suggested that both types of barges be exempt from the twin-screw requirement. We disagree. While the RRAT did provide the possibility for the continued use of double-bottom barges, such barges do not provide the same level of environmental protection as double-hull tank barges. This final rule does not preclude the continued use of double-bottom tank barges; it does require them to be towed by tugs with twin-screws and two engines or, alternatively, that they be accompanied by an escort or assist tug.

Two comments stated that the RRAT had recommended an exemption for single-screw vessels towing single-hull barges on restricted routes and had not envisioned the elimination entirely of single-screw towing vessels. The comments recommended that the Captain of the Port (COTP) should have latitude to grant a waiver after

considering all safety aspects, and that the waiver be valid for the prolonged service of the barge. The two comments recommended that the language found in the RRAT report concerning waivers available to single-screw towing vessels be placed in this final rule. We disagree, and point out that single-screw towing vessels may continue to tow double-hull tank barges, and may also tow other tank barges subject to the escort or assist tug requirement. Further, this final rule allows the COTP to authorize an exemption from the escort or assist tug requirement for single-screw towing vessels towing tank barges with a capacity of less than 25,000 barrels in areas of limited depth or width. The rule does not limit COTP discretion in applying the exemption which may be available for the prolonged service of the barge.

One comment recommended that the requirements of this rule apply to all towing vessels, regardless of their tow, not just those towing tank barges carrying petroleum oil in bulk as cargo in the RNA. We disagree and find this comment beyond the scope of this rulemaking, which is aimed at reducing the risks associated with the waterborne transportation of petroleum products, and is authorized by section 311 of the Coast Guard Authorization Act of 1998. This rulemaking stemmed from recommendations made by the RRAT's view on the hazards associated with the transportation of petroleum oils by barges. The Coast Guard will consider the future application of this rule to tank barges carrying other oils or chemicals and may initiate a rulemaking to address that situation.

One comment noted that when a tank ship is being operated in pilotage waters there must be two licensed officers in the wheelhouse. The comment further noted that this requirement is not practicable on a 24-hour basis for most tugs; however, it recommended that in certain areas of the RNA this might be a good practice. The comment recommended an additional licensed officer be required in the wheelhouse when the vessel is towing in the operating areas of VTS New York, the Race, the Cape Cod Canal, and entrances of harbors where traffic is more concentrated. We agree with the comment that increased manning in the wheelhouse may be a good operating procedure, and we point out that it remains the watch officer's prerogative to summon an additional watchstander or lookout for assistance in areas of dense traffic. However, we disagree with a requirement for two licensed officers based on a comparison between a tank ship and a towing vessel, noting the differences in equipment, manning requirements, and vessel dynamics. Because 46 U.S.C. 8104(h) limits the amount of time that a licensed towing vessel operator can work, not to exceed 12 hours in a consecutive 24-hour period, a towing vessel on a voyage of less than 12 hours may operate with only a single licensed watch officer. Although many towing vessels have two watch officers, the alternate licensed officer may be resting before relief. Manning regulations are not within the limited authority of the First District Commander and are beyond the scope of this rulemaking.

One comment recommended changing 33 CFR 165.100(d)(1)(i) to read ''* * * primary towing vessel with twin-screw propulsion and/or single screw with a separate system of providing power * * *''. It reasoned that an articulated tug and barge (ATB) is usually equipped with twin engines and a single screw. The comment noted that this type of arrangement is capable of switching from one engine to the other to maintain propulsion, while maneuverability and handling are heightened through the use of a single screw, which is capable of turning 360° within a kort nozzle (a propeller shroud designed to enhance thrust). The comment noted that to convert ATBs from single-screw to twin-screw would be cost-prohibitive. It also noted that our Background and Purpose mentioned 12 reported incidents involving engine failures aboard towing vessels. It stated that these casualties avoided serious harm because the tugs involved switched to the second engine. The comment noted that the statistics did not reflect whether a twin-screw configuration was a mitigating factor in these incidents. We note this comment. Of the 12 casualties, 2 were mitigated by the use of the towing vessel's alternate steering system. Additionally, the NPRM contained a summary of a potential major pollution incident on August 25, 1998, that was mitigated by the towing vessel's alternate steering system when one of two screws became fouled in the towing hawser. However, we disagree with the acceptance of a single-screw towing vessel except when towing double-hull tank barges, or when exempted by the COTP while operating in areas of limited depth or width. The use of twin-screw and two-engine towing vessels ensures that the tug is capable of maintaining the navigational control of the tank barge in the event of a loss of the primary component. Although the single-screw ATB may have enhanced maneuverability, it does not provide a backup means of steering should the primary screw become fouled or damaged. Further, the single-screw ATB described in the comment is not prohibited from towing tank barges in the First Coast Guard District. The final rule does not prohibit the use of single-screw vessels to tow tank barges; it does, however, require that they be escorted by a second towing vessel. Single-screw towing vessels may also tow double-hull tank barges which are exempt from the twin-screw, two-engine requirement, or upon COTP exemption may tow a single hull tank barge with a capacity of less than 25,000 barrels in areas of limited depth and width.

One comment noted that emergency steering and fendering systems are addressed in 33 CFR 157.460; it mentioned that the vessels towing single-hull tank barges must have twin-screw propulsion with separate control systems to each propeller. It wanted to know whether this rule applied to ATBs operating in the pushing mode. The comment asked whether this type of vessel would get special consideration for its unique twin engine, single-screw configuration and be declared exempt from this rule. We note the comment, but find it beyond the scope of this rulemaking. Though the ATBs may provide a propulsion redundancy, without a secondary steering system, these single-screw ATBs would not qualify for any special consideration other than is available for single-screw towing vessels.

One comment stated that the Coast Guard has granted exemptions for specialized towing configurations such as integrated tug-and-barge (ITB) units. It noted that Coast Guard Navigation and Vessel Inspection Circular (NVIC) 2–81 classifies ITBs into two categories, including one that accepts them as a single vessel (tug and barge together). The comment asked whether we could categorize ATBs in a like manner and grant them a similar exemption as it applies to requirements for escort tugs in the First District. The comment stated that if the ATBs were recognized by the Coast Guard and placed in a special class, and if they did not require escort tugs, then this outcome may affect companies' decisions to operate this type of tugboat in the Northeast. We find this comment beyond the scope of this rulemaking. While the referenced NVIC described a national policy determination by Commandant (G–M), no such policy exists for ATBs. Such a request is more appropriately addressed by Commandant (G–M).

One comment recommended that the word ''immediately'' be removed from proposed section 165.100(d)(1)(iv). It noted that the use of the term implies

that the watch officer should ignore potentially more important duties such as crewmember safety or vessel control to make the required call for assistance. It suggested that we adopt language comparable to that under 46 CFR 4.05–1. We disagree that the notification requirement implies that the watch officer should ignore more urgent crewmember or vessel safety concerns to call for an escort or assist vessel. Further, the requirement of 46 CFR 4.05–1 is to ensure Coast Guard notification following a marine casualty, while the intent of § 165.100(d)(1)(iv) is to provide an escort or assist vessel for assistance.

One comment expressed concern with the proposal to require the use of twin-screw and two engine towing vessels when towing single-hull tank barges. The comment noted that because twin-screw and two engine towing vessels are designed for enhanced maneuverability, the screws are placed as far as possible off the centerline on each side of the vessel. With the loss of one screw, the thrust from the remaining screw would result in an imbalance that would prevent steady navigation. We disagree. While the loss of the primary screw on a towing vessel may cause navigational difficulties due to the thrust of the secondary screw, the vessel would still have the capability to maneuver using the rudders. The purpose of having the redundant propulsion and steering system is to provide the capability to avoid a collision or grounding in the event the primary system fails.

One comment noted that instead of prohibiting the use of single engine towing vessels when towing single-hull tank barges, the Coast Guard should consider a requirement for the barge to be towed by two towing vessels. We point out that single engine towing vessels are not prohibited from towing single-hull tank barges by this rulemaking. Instead, single engine towing vessels may continue in operation provided they are: escorted by a second towing vessel, towing double-hull tank barges, or receive an exemption from the COTP for transiting in areas of limited depth or width as provided in § 165.100(d)(1)(iii).

Enhanced Communications

One comment supported the requirement for additional securité calls. It also noted that the VTS further enhances the information-sharing network in a port, and that the required securité calls would encourage communications that would enhance safety in the marine environment.

Included in the final rulemaking are three minor clerical changes, reordering of the securité calls by proximity, and the addition of two securité call locations which were recommended by the RRAT report but were omitted from the NPRM. The clerical changes include the correct spelling for Execution Rocks Light, Cable and Anchor Reef Buoy, Falkner Island Light, and Cape Cod Canal. Neither the clerical changes, nor the modifications to the securité calls, are significant. These changes do not affect the Regulatory Assessment estimates or cost benefit analysis.

Voyage Planning

One comment stated that the RRAT had recognized that the elements of a voyage plan could be identified to develop a template, but added that the specifics of a plan would need to be adapted to the geographic area traversed and to the specific equipment used. The comment maintained that a requirement to consider company-specific guidelines for under-keel clearance in ports and berths is feasible and required by 33 CFR 157.455. It further noted that local regulatory requirements might not be feasible because they may be non-existent. It recommended that the rule incorporate language to the effect that, where services, information, and standards are available, they be considered in the development of voyage plans. We agree that if information is available, then it should be considered when developing the voyage plan. However, because it is not possible to regulate consideration, we have not amended the final rule. Instead, we support the prudent mariner's use of whatever information is available to assist in creation of a voyage plan.

Two comments noted that the proposed rule also refers to several requirements that are part of existing rules, such as to record forward and after drafts of the vessel, to report to VTS, and to consult specific publications that must be aboard the vessel. The comments could not understand how existing requirements interface with this rule, and they recommended that, to avoid redundancy, the RNA cross-reference existing regulatory requirements and that they be considered in the development of voyage plans. We note the comments but find them beyond the scope of this rulemaking.

Two comments clarified that the RRAT had noted both that the ''watch officer'' is the appropriate individual to modify a voyage plan and that this person could be the master or mate. The comments stated that the RRAT had never envisioned that the master be the only person authorized to modify a voyage plan. The comments recommended that the rule allow the master, mate, or other person intricately involved in the development of the plan be authorized to modify and execute the plan. We agree and point out that while 33 CFR 165.13(a) places the responsibility for the vessel's operation on the master, the watch officer should be able to modify the voyage plan in accordance with the need for safe navigation. As such, we have modified the final rule to reflect that change.

One comment noted that under the proposed rule a modified voyage plan for transits in a limited geographical area would have to include weather, sea state, and tidal conditions. The comment also noted that these factors may not be significantly different from one part of the area to another, and weather forecasts may not be available for a particular area, either. The comment concluded that the specifics of a voyage plan for a port complex need not be as detailed as those for a coastal transit of significant duration. The comment suggested that current weather has only to be noted in the vessel's log at time of transit. We agree. Although in some instances the towing vessel is not required to carry a log, it remains common practice for the industry. As long as the weather is accounted for in the voyage plan or the vessel's log book, an entry in either will satisfy the requirement. The final rule has been changed accordingly.

One comment noted that an owner or operator of a tank barge may prepare a modified voyage plan for an intra-port transit of not more than four hours. It further noted that, because of constraints on berthing availability, an operator loads cargo early and then the vessel proceeds at reduced speed to take advantage of favorable tide conditions at its final destination. This operating method may result in an intra-port transit of greater than four hours, even though distance traveled is minimal. The comment recommended that the modified voyage plan be acceptable for all intra-port transits and that the four-hour limitation be deleted. We disagree. The abbreviated voyage plan came about in the first place as an alternative to reduce the amount of required information, taking into account the short intra-port transit of a tug and barge. Although intra-port transits may not require the same planning, the intention of the four-hour time limit was to avoid the inherent risks present in a longer voyage where risk is heightened, especially in ports of high-density traffic.

One comment noted that § 165.100(d)(3)(ii)(A) is very similar to

46 CFR 35.05–15(b)(1)(iv). It is recommended that we modify 46 CFR part 35 so as to include cargo quantities and to cover all barges, not just unmanned ones, and that we then cross-refer to it in 33 CFR 165.100(d)(3). The comment further stated that any effort by the Coast Guard to consolidate its rules would be greatly appreciated by the regulated community. We note the comment but find it beyond the scope of this rulemaking because 46 CFR part 35 is a national rule.

Navigation Restricted Areas

A comment supported the designation of Fisher's Island and the eastern part of Cape Cod as Navigation Restricted Areas.

One comment noted that the proposed rule would preclude mariners from seeking and hiding underneath the hook of Cape Cod while waiting for bad weather to subside. We disagree. The rule simply requires any tank barge desiring to operate in the designated area to obtain authorization from the COTP. Thus, a towing vessel may request such authorization in the event of an emergency to avoid endangering the vessel.

Regulatory Assessment

This rule is not a significant regulatory action under 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. It has not been reviewed by the Office of Management and Budget (OMB) 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).

A Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES.** A summary of the Assessment follows:

Summary of Benefits

The principal benefits of this rule are protection against oil spillage, human casualties, and property damage that may result from navigation-related incidents of tank barges and towing vessels while underway in the navigable waters of the First Coast Guard District. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled, averted injuries and deaths, and averted damage to vessels and property measured in dollars.

Using information from the Coast Guard Marine Safety Management System from January 1, 1992, to December 31, 1996, we reviewed 96 tank barge casualty cases. These casualties involved vessels that were underway within the boundaries of the First Coast Guard District which would have been affected by this rule if it had been in effect. This period represents some post OPA–90 experience, is long enough to survey a significant number of casualties, and short enough to avoid old problems which are now solved. These 96 cases provided the pool from which the benefits are estimated. During this base period, there was no reported oil spilled from double-hull barges.

For all four measures, we reviewed each casualty case report to assess whether the casualty could have been prevented or diminished in severity by this rule. A team of Coast Guard analysts assigned an effectiveness degree to which each measure would have positively affected each casualty case. We tabulated data on deaths and injuries, oil spillage, and dollar totals reported for damage to the tank barges, towing vessels, piers, or other structures, and estimated benefits for each measure adjusted to the accurate degree of effectiveness.

The assessment indicated that, until the phase-out of single-hull tank vessels (Sec. 4115(a) of OPA 90), the requirements of this RNA would bring total benefits of $454,365 in averted damage to vessels and property (1998 dollars); $155,107 in averted deaths (1998 dollars); and 384.85 barrels of oil in averted pollution. These numbers are different from those in the Preliminary Regulatory Assessment due to a refinement of the phase-out methodology.

Summary of Costs

Businesses that use tank barge and towing vessels within the geographic boundaries of the First District, as well as the tank barge and towing vessel industries themselves, will bear the majority of the costs of this rule.

The cost of this rule is the sum of costs from the requirements for positive control for barges, enhanced communications, voyage planning, and restricted navigation areas. These anticipated costs recognize that many of the towing vessels and tank barges operating within the geographic boundaries of the First District are already in compliance with these requirements.

(1) *Positive Control for Barges:* Data from the U.S. Army Corps of Engineers indicated that there are approximately 12,892 transits occurring within the District each year. Of these transits, we estimate 1.95%, or 251, involve a single-hull, petroleum-laden tank barge being towed by a tug without twin engines or twin screws, and thus, this rule would require an escort or assist tug. The cost of an escort or assist tug is $300 an hour. It is assumed this escort or assist tug would, on average, spend 20 hours in round trip service on each transit. The cost of the tug for a single transit would therefore be $6,000. Discounting to 1998 dollars, and factoring in the phase-out of single-hull tank barges, we calculate the costs of these tugs at $12,796,834.

(2) *Enhanced Communications:* This rule would require the operator of a towing vessel to make approximately eight securité calls during the average transit in the First District. Each securité call would take about 30 seconds or 4 minutes each transit. The securité calls will be placed by the person on watch and it is assumed that the master and the mate each make half of the securité calls. The average daily billing rate for a towing vessel's master is $400, while the average daily billing rate for a towing vessel's mate is $270. Based on an eight-hour day, the opportunity cost of the securité call rule for each transit is $2.79. We estimated that 55% of the 12,892 annual transits, 7,091 transits, involve oil-laden tank barges. With 7,091 transits within the First District each year affected by the enhanced communications rule, discounting to 1998 dollars, we calculate the opportunity cost of enhanced communications at $186,892. However, these enhanced communications requirements do not truly represent a cost upon the towing vessel operator. The securité calls will become a routine task of the person on watch, and will neither cause this person to spend additional time performing watch duties, nor detract from the time available for performing existing duties. Therefore, the total cost of enhanced communications is $0.

(3) *Voyage Planning:* For each transit, as a representative of the owner or operator, the master of the towing vessel spends approximately 30 minutes preparing the voyage plan. Again, the average daily billing rate for a towing vessel's master is $400. We estimated that 55% of the annual transits involve oil-laden tank barges. Further, using data from the American Waterway Operators, we assumed that 90% of the transits are already in compliance with this rule. For the 12,892 transits within the First District each year, voyage planning will affect 709 transits. The cost of voyage planning, discounted to 1998 dollars, would be $167,461.

(4) *Navigation Restriction Areas:* Currently all towing vessels and tank barges operating within the geographic boundaries of the First District, avoid operating in the areas of Fishers Island

Sound and the eastern portion of Cape Cod Bay addressed in this rule. The cost of navigation restriction area is $0.

SUMMARY: The total present value of the costs of this rule (1998 dollars) would be $12,964,345 [$12,796,834 for positive control of barges + $0 for enhanced communications + $167,461 for voyage planning + $0 for navigation restriction areas]. In terms of cost-effectiveness, this rule would prevent future pollution in the First District at a cost of $32,103 per barrel of oil not spilled.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include 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 rule requires that all transits involving towing vessels that are not equipped with twin-screw and twin-engine propulsion and are engaged in towing petroleum-laden tank barges in the navigable waters of the First Coast Guard District, employ escorts or assist tugs.

It is primarily the businesses that hire the towing vessels and tank barges for transporting their goods that directly incur the costs of this rulemaking by having to pay for the escorts or assist tugs. However, some towing-vessel companies, most of which are small entities, may be indirectly affected by this rule if they can no longer provide tug service at a competitive price because of the requirement that they employ escorts or assist tugs.

These companies do have alternatives available, under which they may use their towing vessels without twin-screws or twin engines for, say, pushing barges in narrow rivers or pushing freight barges. Additionally, with only 5% of all towing vessels not having the necessary propulsion equipment, nearly all the towing companies are already in compliance. Further, information from towing vessel operators indicate that they already select against the use of their towing vessels without twin screws or twin engines for the practice of towing petroleum-laden tank barges. Finally, the cost of escorts or assist tugs is low in comparison with the cost of replacing or retro-fitting all their vessels without twin screws or twin engines with a compliant propulsion system.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Commander (m), First Coast Guard District, provided explanatory information to a number of individuals by telephone.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This final rule provides for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

As required by 5 U.S.C. 3507(d), the Coast Guard submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. No collection of information-specific comments were submitted to the docket in response to the NPRM. OMB has approved the collection. The section number is § 165.100(d)(3), and the corresponding approval number from OMB is OMB Control Number 2115–0637, which expires on November 30, 2001.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

Federalism

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that there will be some preemptive impacts on the Rhode Island Tank Vessel Safety Act, 46 R.I.G.L. § 12.6. Specifically, the rules on positive control for barges [33 CFR § 165.100(d)(1)] will preempt 46 R. I. G. L. § 12.6–8(a)(3) on the same subject. The rules on enhanced communications [33 CFR § 165.100(d)(2)] will preempt 46 R. I. G. L. § 12.6–8(b) on the same subject. The rules on voyage planning [33 CFR § 165.100(d)(3)] will preempt 46 R. I. G. L. § 12.6–8(c) on the same subject. However, the Rhode Island Tank Vessel Safety Act, at 46 R.I.G.L. § 12.6–12 presaged preemption of this sort. The other provisions of 46 R.I.G.L. § 12.6, although still subject to a separate preemption analysis, remain unaffected by this final rule. No other states within the regulated navigation area have enacted a similar regime. Therefore, it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, 109 Stat. 48, requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate $100 million or more in any one year, the UMRA analysis is required. This final rule would not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraphs 34(g) and (i) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; Sec. 311, Pub. L. 105–383; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add § 165.100 to read as follows:

§ 165.100 Regulated Navigation Area: Navigable waters within the First Coast Guard District.

(a) *Regulated navigation area.* All navigable waters of the United States, as

that term is used in 33 CFR 2.05–25(a), within the geographic boundaries of the First Coast Guard District, as defined in 33 CFR 3.05–1(b).

(b) *Definitions.* Terms used in this section have the same meaning as those found in 33 CFR 157.03. Single-hull identifies any tank barge that is not a double-hull tank barge.

(c) *Applicability.* This section applies to primary towing vessels engaged in towing tank barges carrying petroleum oil in bulk as cargo in the regulated navigation area, or as authorized by the District Commander.

(d) *Regulations*—(1) *Positive control for barges.* (i) Except as provided in paragraph (d)(1)(iii) of this section, each single-hull tank barge, unless being towed by a primary towing vessel with twin-screw propulsion and with a separate system for power to each screw, must be accompanied by an escort or assist tug of sufficient capability to promptly push or tow the tank barge away from danger of grounding or collision in the event of—

(A) A propulsion failure;

(B) A parted towing line;

(C) A loss of tow;

(D) A fire;

(E) Grounding;

(F) A loss of steering; or

(G) Any other casualty that affects the navigation or seaworthiness of either vessel.

(ii) Double-hull tank barges are exempt from paragraph (d)(1)(i) of this section.

(iii) The cognizant Captain of the Port (COTP) may authorize an exemption from the requirements of paragraph (d)(1)(i) of this section for any tank barge with a capacity of less than 25,000 barrels, to operate in an area with limited depth or width such as a creek or small river. Each request for an exemption under this section must be submitted in writing to the cognizant COTP.

(iv) The operator of a towing vessel engaged in towing any tank barge must immediately call for an escort or assist tug to render assistance in the event of any of the occurrences identified in paragraph (d)(1)(i) of this section.

(2) *Enhanced communications.* Each vessel engaged in towing a tank barge must communicate by radio on marine band or Very High Frequency (VHF) channel 13 or 16, and issue securité calls on marine band or VHF channel 13 or 16, upon approach to the following places:

(i) Execution Rocks Light (USCG Light List No. [LLNR] 21440).

(ii) Matinecock Point Shoal Buoy (LLNR 21420).

(iii) 32A Buoy (LLNR 21380).

(iv) Cable and Anchor Reef Buoy (LLNR 21330).

(v) Stratford Middle Ground Light (LLNR 21260).

(vi) Old Field Point Light (LLNR 21275).

(vii) Approach to Stratford Point from the south (NOAA Chart 12370).

(viii) Falkner Island Light (LLNR 21170).

(ix) TE Buoy (LLNR 21160).

(x) CF Buoy (LLNR 21140).

(xi) PI Buoy (LLNR 21080).

(xii) Race Rock Light (LLNR 19815).

(xiii) Valiant Rock Buoy (LLNR 19825).

(xiv) Approach to Point Judith in vicinity of Block Island ferry route.

(xv) Buzzards Bay Entrance Light (LLNR 630).

(xvi) Buzzards Bay Midchannel Lighted Buoy (LLNR 16055)

(xvii) Cleveland East Ledge Light (LLNR 16085).

(xviii) Hog Island buoys 1 (LLNR 16130) and 2 (LLNR 16135).

(xix) Approach to the Bourne Bridge.

(xx) Approach to the Sagamore Bridge.

(xxi) Approach to the eastern entrance of Cape Cod Canal.

(3) *Voyage planning.* (i) Each owner or operator of a towing vessel employed to tow a tank barge shall prepare a written voyage plan for each transit of the tank barge.

(ii) The watch officer is authorized to make modifications to the plan and validate it as necessary.

(iii) Except as provided in paragraph (d)(3)(iv) of this section, each voyage plan must contain:

(A) A description of the type, volume, and grade of cargo.

(B) Applicable information from nautical charts and publications, including Coast Pilot, Coast Guard Light List, and Coast Guard Local Notice to Mariners, for the destination(s).

(C) Current and forecasted weather, including visibility, wind, and sea state for the destination(s).

(D) Data on tides and tidal currents for the destination(s).

(E) Forward and after drafts of the tank barge, and under-keel and vertical clearances for each port and berthing area.

(F) Pre-departure checklists.

(G) Calculated speed and estimated times of arrival at proposed waypoints.

(H) Communication contacts at Vessel Traffic Service (VTS) (if applicable), bridges, and facilities, and port-specific requirements for VHF radio.

(I) The master's standing orders detailing closest points of approach, special conditions, and critical maneuvers.

(iv) Each owner or operator of a tank barge on an intra-port transit of not more than four hours may prepare a voyage plan that contains:

(A) The information described in paragraphs (d)(3)(iii)(D) and (E) of this section.

(B) Current weather conditions including visibility, wind, and sea state. This information may be entered in either the voyage plan or towing vessel's log book.

(C) The channels of VHF radio to monitor.

(D) Other considerations such as availability of pilot, assist tug, berth, and line-handlers, depth of berth at mean low water, danger areas, and securité calls.

(4) *Navigation restriction areas.* Unless authorized by the cognizant COTP, no tank barge may operate in—

(i) The waters of Cape Cod Bay south of latitude 42° 5′ North and east of longitude 70° 25′ West; or

(ii) The waters of Fishers Island Sound east of longitude 72° 2′ West, and west of longitude 71° 55′ West.

Dated: December 18, 1998.

[FR Doc. 98–34414 Filed 12–24–98; 8:54 am]

BILLING CODE 4910–15–P

PRESIDIO TRUST

36 CFR Parts 1007, 1008 and 1009

RIN 3212–AA01

Management of the Presidio: Freedom of Information Act, Privacy Act, and Federal Tort Claims Act

AGENCY: The Presidio Trust.

ACTION: Final rule.

SUMMARY: The Presidio Trust (Trust) published proposed regulations in the **Federal Register** on September 18, 1998 (63 FR 50024–50055) concerning management of the area under the administrative jurisdiction of the Trust as well as various administrative matters. The public comment period on portions of these proposed regulations (proposed 36 CFR Parts 1007, 1008, and 1009) closed on November 17, 1998, while the public comment period on the remaining portions (proposed 36 CFR Parts 1001, 1002, 1003, 1004, 1005, and 1006) was extended until January 8, 1999. See 63 FR 64023 (November 18, 1998). In today's action, the Trust is promulgating final regulations concerning the Freedom of Information Act (Part 1007), the Privacy Act (Part 1008), and the Federal Tort Claims Act (Part 1009).

DATES: These regulations will be effective on January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION:

Background

The Presidio Trust is today promulgating final regulations concerning processing of requests under the Freedom of Information Act (FOIA), requests under the Privacy Act, and claims under the Federal Tort Claims Act. These regulations were proposed by the Trust by publication in the **Federal Register** on September 18, 1998 (63 FR 50024–50055). Other background information concerning the Presidio Trust and this rulemaking was presented in the preamble to the proposed regulations.

Consideration of Comments Received and Discussion of Changes Made

The Trust solicited public comment on these regulations in their proposed form for a period of sixty days. In addition, the Trust consulted with the Secretary of the Interior, who serves on the Trust's Board of Directors pursuant to sec. 103(c)(1)(A) of the Trust Act, as well as with officials of the Department of the Interior and the National Park Service designated by the Secretary of the Interior to facilitate such consultation. Staff of the Trust also thoroughly reviewed the proposed regulations for grammar, punctuation, and readability.

One written comment was received from the public. This comment is available for public inspection and copying by contacting the Trust at the address noted above. The commenter objected to proposed § 1007.8(c)(3), which provides for judicial review of adverse FOIA decisions by the Trust only in the U.S. District Court for the Northern District of California. The commenter believed that this restriction would have the potential to curtail the public's ability to appeal a decision by the Trust. This was not the Trust's intention in proposing this regulation; rather, the Trust proposed this regulation in order to adhere to the limitations established in the Trust's enabling statute, Title I of Public Law 104–333. Section 104(h) of that law limits suits against the Trust to the U.S. District Court for the Northern District of California. As a result, the final regulation on this point remains unchanged.

The one written comment received also objected to the elimination of language describing the factors likely to be used in reviewing requests for fee reduction or waiver. This language is found in the regulations of the Department of the Interior—on which the Trust based its FOIA regulations—at 43 CFR 2.21(a)(2) and (a)(3). These factors were not included in the Trust's proposed regulations because the Trust believes they are not a necessary part of the regulatory language, which the Trust wants to keep as simple and short as possible. This should not be read as an indication that the Trust will not look to these factors, among others, in making decisions on fee waiver requests. The commenter noted that these factors are intended to educate the individuals and organizations seeking information in the public interest as to the kinds of requests for information for which fee waivers or reductions may be granted. The Trust agrees that this is the intent behind publishing these factors and believes that this intent will best be served by publishing these factors in informal guidance to the public concerning FOIA requests of the Trust. The Trust anticipates that this guidance will be published on the Trust's internet website (http://www.presidiotrust.gov) in the near future.

As a result of informal consultations and internal review, the Trust made a number of minor modifications to the proposed version of these regulations. None of these modifications effects any substantive change in the intent of the proposed regulations; in fact, most are concerned with matters of format and punctuation. For ease of reference and public notice, they are enumerated below:

The authority citation for the FOIA regulations was amended to add a reference to Executive order 12,600, Predisclosure Notification Procedures for Confidential Commercial Information. In particular, § 1007.4(c) relies on this authority.

The definitions of ''FOIA'' and ''FOIA Officer,'' which were contained in § 1001.4 of the proposed regulations published on September 18, 1998 (63 FR 50033), have been incorporated into § 1007.1(a) and (b) of these final regulations. This change was necessary because the comment period on Part 1001 of the proposed regulations has not yet closed, but these definitions are essential to understanding Part 1007.

For the sake of readability, the final regulations also revised the language in Parts 1007 and 1008 requiring prominent legends on both the envelope containing a request or appeal and the document itself. This revision was made to § § 1007.3(b)(5), 1008.11(b)(2), and 1008.14(b)(2) and conforms to the language used in § 1007.7(c)(3), which reads: ''To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend 'FREEDOM OF INFORMATION APPEAL.' '' No substantive change is intended by this minor change in wording.

In § 1007.5(d)(4), the proposed language was not as clear as possible concerning whether the decision due within ten calendar days of receiving a request for expedited processing was to be made concerning the request for expedited processing or the underlying FOIA request itself. The final regulation states more clearly that the decision due within ten calendar days is on the request for expedited processing, which, if granted, will result in priority being given to processing of the underlying FOIA request.

Proposed § 1007.9(a)(1) referred to the ''current schedule of charges determined by the Board * * *.'' This provision has been revised, for the sake of administrative efficiency and consistent with Board resolution, to indicate that the schedule of charges will be determined by the Trust's Executive Director. A similar change has been made in § 1008.15(d)(2), which refers to the same schedule of charges. In addition, each of these sections has been revised to incorporate into the regulatory language the requirement that these charges be set at the level necessary to recoup the full allowable direct costs to the Trust. This requirement was noted in the preamble to the proposed regulations (at 63 FR 50030) and has been set pursuant to 5 U.S.C. 552(a)(4)(A)(i) by sec. 7 of the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (Mar. 27, 1987). The current charges for services that are likely to be requested on a regular basis are as follows:

—For black and white copies of documents reproduced on a standard office photocopying machine in sizes of 8½ × 11 inches or 8½ × 14 inches, the charge is $0.20 per page for single-sided copies and $0.40 per page for double-sided copies. For copies of documents that require special handling because of their age, size, or color, the charge will be based on the direct costs of reproducing the materials.

—Time for search and review of documents in response to requests will be charged at the rate of $6.25 per quarter hour (or portion thereof) when the search and review is performed by administrative staff and $10.00 per hour (or portion thereof) when the

search and review is performed by professional staff.

—Other materials or services provided in response to a request—including but not limited to delivery by means other than regular mail; searching, reviewing, or providing records in microfiche or electronic form; or authenticating copies—will be charged at the full allowable direct cost to the Trust calculated on a case-by-case basis.

Proposed § 1007.9(a)(2) referred to ''the costs of collecting'' a fee. In order to be consistent with the OMB Guidelines noted above, this provision has been revised to refer to ''the costs of routine collection and processing'' of a fee. The Trust has determined that this is currently $5.00.

Proposed § 1007.9(h)(1) allowed the Trust to require advance payment of FOIA fees where the fees are anticipated ''to exceed $250.00 and the requester does not have a history of prompt payment of FOIA fees * * *.'' This language was taken directly from the FOIA regulations of the Department of the Interior at 43 CFR 2.20(h). FOIA itself provides that ''[n]o agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.'' 5 U.S.C. 552(a)(4)(A)(v). The statute therefore authorizes the Trust to require advance payment of fees that will exceed $250 regardless of the requester's payment history. Accordingly, the Trust has revised § 1007.9(h)(1) to be consistent with the statute by removing the phrase ''and the requester does not have a history of prompt payment of FOIA fees.''

The other criterion of the statutory provision concerning timely payment of fees is already covered by § 1007.9(h)(2). In order to clarify that—consistent with common practice—processing of all new or pending FOIA requests by a requester, regardless of when they were received by the Trust, will ordinarily be suspended for non-payment of fees billed to that requester, these final regulations have deleted the word ''new'' in the two places where it appears in proposed § 1007.9(h)(2). Also along these lines, the final regulations append the phrase ''at the requester's expense'' to proposed § 1007.1(c)(1) in order to make clear that, consistent with the Trust Act's requirement that the Trust become self-sufficient, personal copies of documents that the Trust makes available for inspection are not ordinarily provided free of charge.

In § 1008.2 of the proposed regulations, the term ''Privacy Act'' was defined as ''section 3 of the Privacy Act, 5 U.S.C. 552a.'' For the sake of clarity, this was revised to state that ''Privacy Act means 5 U.S.C. 552a.'' Other definitions in § 1008.2 were placed in proper alphabetical order.

Several provisions of the proposed regulations referred to the ''compendium'' to be published under proposed § 1001.7. Because the comment period on proposed § 1001.7 has not yet closed, this reference has been changed to refer to the ''compilation'' required under § 1001.7(b) of the Trust's final interim regulations, which are currently in effect. This change was made to § § 1007.9(a)(1), 1007.9(a)(2), and 1008.15(d)(2) of the proposed regulations.

Minor grammatical changes were made to enhance the readability of certain provisions, including § § 1007.3(b)(3)(i)(A), 1007.4(b)(1)(i), and 1008.9(d). In § 1008.16(d)(1), the cross-reference to § 1008.12 was corrected to § 1008.11. In addition, semicolons, articles, and disjunctive or conjunctive prepositions were added in various locations to improve readability.

Regulatory Impact and Congressional Review

This rulemaking will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. This rule will not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of this rule. Because this rule is not ''economically significant,'' it is not subject to review by the Office of Management and Budget under Executive Order 12866.

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule will not have a significant economic effect on a substantial number of small entities.

The Trust has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities.

In accordance with the Congressional Review Act, 5 U.S.C. 801 *et seq.*, the Trust has submitted a copy of this rule, together with other required information, to each House of Congress and to the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' within the meaning of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Environmental Impact

The Presidio Trust prepared an Environmental Assessment (EA) in connection with the proposed version of this rule. The EA determined that the proposed version of this rule would not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Presidio in any significant manner. As a result, the Trust issued a Finding of No Significant Impact (FONSI) concerning the proposed rule and therefore did not prepare an Environmental Impact Statement concerning the proposed rule. The EA and the FONSI were prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA), and regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA, 40 CFR parts 1500–1508. Both the EA and the FONSI are available for public inspection at the offices of the Presidio Trust, 34 Graham Street, The Presidio, San Francisco, CA 94129, between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

In light of the non-substantive changes made to the proposed version of this rule before its consideration by the Trust as a final rule, the Trust has adopted the prior EA and issued a Finding of No Significant Impact with respect to this final rule.

Paperwork Reduction Act

This final rule contains no information collection requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., is not required.

Other Applicable Authorities

The Presidio Trust has determined that these regulations meet the applicable standards provided in secs. 3 (a) and (b) of Executive Order 12988.

List of Subjects

36 CFR Part 1007

Administrative practice and procedure, Freedom of information, Records.

36 CFR Part 1008

Administrative practice and procedure, Privacy, Records.

36 CFR Part 1009

Administrative practice and procedure, Tort claims.

Dated: December 18, 1998.

James E. Meadows,

Executive Director.

Accordingly, the Presidio Trust adds 36 CFR Parts 1007, 1008, and 1009, as set forth below:

PART 1007—REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

Sec.

1007.1 Purpose and scope.
1007.2 Records available.
1007.3 Requests for records.
1007.4 Preliminary processing of requests.
1007.5 Action on initial requests.
1007.6 Time limits for processing initial requests.
1007.7 Appeals.
1007.8 Action on appeals.
1007.9 Fees.
1007.10 Waiver of fees.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552; E.O. 12,600, 52 FR 23781, 3 CFR, 1988 Comp., p. 235.

§ 1007.1 Purpose and scope.

(a) This part contains the procedures for submission to and consideration by the Presidio Trust of requests for records under FOIA. As used in this part, the term ''FOIA'' means the Freedom of Information Act, 5 U.S.C. 552.

(b) Before invoking the formal procedures set out below, persons seeking records from the Presidio Trust may find it useful to consult with the Presidio Trust's FOIA Officer, who can be reached at The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, Telephone: (415) 561–5300. As used in this part, the term ''FOIA Officer'' means the employee designated by the Executive Director to process FOIA requests and otherwise supervise the Presidio Trust's compliance with FOIA, or the alternate employee so designated to perform these duties in the absence of the FOIA Officer.

(c) The procedures in this part do not apply to:

(1) Records published in the **Federal Register**, the Bylaws of the Presidio Trust, statements of policy and interpretations, and other materials that have been published by the Presidio Trust on its internet website (http://www.presidiotrust.gov) or are routinely made available for inspection and copying at the requester's expense.

(2) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 1007.2(c)(7) if:

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that:

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(3) Informant records maintained by the United States Park Police under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 1007.2 Records available.

(a) *Policy.* It is the policy of the Presidio Trust to make its records available to the public to the greatest extent possible consistent with the purposes of the Presidio Trust Act and the Freedom of Information Act.

(b) *Statutory disclosure requirement.* FOIA requires that the Presidio Trust, on a request from a member of the public submitted in accordance with the procedures in this part, make requested records available for inspection and copying.

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1)(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) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act), 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) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) 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 a fair 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 which furnished information on a confidential basis, and, in the case of a record or 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) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Decisions on requests.* It is the policy of the Presidio Trust to withhold information falling within an exemption only if:

(1) Disclosure is prohibited by statute or Executive order or

(2) Sound grounds exist for invocation of the exemption.

(e) *Disclosure of reasonably segregable nonexempt material.* If a requested record contains material covered by an exemption and material that is not exempt, and it is determined under the procedures in this part to withhold the exempt material, any reasonably segregable nonexempt material shall be separated from the exempt material and released. In such circumstances, the records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted wherever practicable.

§ 1007.3 Requests for records.

(a) *Submission of requests.* A request to inspect or copy records shall be submitted to the Presidio Trust's FOIA

Officer at P.O. Box 29052, San Francisco, CA 94129–0052.

(b) *Form of requests.* (1) Requests under this part shall be in writing and must specifically invoke FOIA.

(2) A request must reasonably describe the records requested. A request reasonably describes the records requested if it will enable an employee of the Presidio Trust familiar with the subject area of the request to locate the record with a reasonable amount of effort. If such information is available, the request should identify the subject matter of the record, the date when it was made, the place where it was made, the person or office that made it, the present custodian of the record, and any other information that will assist in locating the requested record. If the request involves a matter known by the requester to be in litigation, the request should also state the case name and court hearing the case.

(3)(i) A request shall:

(A) Specify the fee category (commercial use, educational institution, noncommercial scientific institution, news media, or other, as defined in § 1007.9 of this chapter) in which the requester claims the request falls and the basis of this claim; and

(B) State the maximum amount of fees that the requester is willing to pay or include a request for a fee waiver.

(ii) Requesters are advised that, under § 1007.9 (f), (g) and (h), the time for responding to requests may be delayed:

(A) If a requester has not sufficiently identified the fee category applicable to the request;

(B) If a requester has not stated a willingness to pay fees as high as anticipated by the Presidio Trust; or

(C) If a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by the Presidio Trust.

(4) A request seeking a fee waiver shall, to the extent possible, address why the requester believes that the criteria for fee waivers set out in § 1007.10 are met.

(5) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''FREEDOM OF INFORMATION REQUEST.''

(c) *Creation of records.* A request may seek only records that are in existence at the time the request is received. A request may not seek records that come into existence after the date on which it is received and may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends or comparisons. In those instances where the Presidio Trust determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material, the Presidio Trust may, in its discretion, agree to creation of a new record as an alternative to disclosing existing records.

§ 1007.4 Preliminary processing of requests.

(a) *Scope of requests.* Unless a request clearly specifies otherwise, requests to the Presidio Trust may be presumed to seek only records of the Presidio Trust.

(b) *Records of other departments and agencies.* (1) If a requested record in the possession of the Presidio Trust originated with another Federal department or agency, the request shall be referred to that agency unless:

(i) The record is of primary interest to the Presidio Trust, for example, because it was developed or prepared pursuant to the Presidio Trust's regulations or request,

(ii) The Presidio Trust is in a better position than the originating agency to assess whether the record is exempt from disclosure, or

(iii) The originating agency is not subject to FOIA.

(2) A request for documents that were classified by another agency shall be referred to that agency.

(c) *Consultation with submitters of commercial and financial information.* (1) If a request seeks a record containing trade secrets or commercial or financial information submitted by a person outside of the Federal government, the Presidio Trust shall provide the submitter with notice of the request whenever:

(i) The submitter has made a good faith designation of the information as commercially or financially sensitive, or

(ii) The Presidio Trust has reason to believe that disclosure of the information may result in commercial or financial injury to the submitter.

(2) Where notification of a voluminous number of submitters is required, such notification may be accomplished by posting or publishing the notice in a place reasonably calculated to accomplish notification.

(3) The notice to the submitter shall afford the submitter a reasonable period within which to provide a detailed statement of any objection to disclosure. The submitter's statement shall explain the basis on which the information is claimed to be exempt under FOIA, including a specification of any claim of competitive or other business harm that would result from disclosure. The statement shall also include a certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(4) If a submitter's statement cannot be obtained within the time limit for processing the request under § 1007.6, the requester shall be notified of the delay as provided in § 1007.6(f).

(5) Notification to a submitter is not required if:

(i) The Presidio Trust determines, prior to giving notice, that the request for the record should be denied;

(ii) The information has previously been lawfully published or officially made available to the public;

(iii) Disclosure is required by a statute (other than FOIA) or regulation (other than this part);

(iv) Disclosure is clearly prohibited by a statute, as described in § 1007.2(c)(3);

(v) The information was not designated by the submitter as confidential when it was submitted, or a reasonable time thereafter, if the submitter was specifically afforded an opportunity to make such a designation; however, a submitter will be notified of a request for information that was not designated as confidential at the time of submission, or a reasonable time thereafter, if there is substantial reason to believe that disclosure of the information would result in competitive harm;

(vi) The designation of confidentiality made by the submitter is obviously frivolous; or

(vii) The information was submitted to the Presidio Trust more than 10 years prior to the date of the request, unless the Presidio Trust has reason to believe that it continues to be confidential.

(6) If a requester brings suit to compel disclosure of information, the submitter of the information will be promptly notified.

§ 1007.5 Action on initial requests.

(a) *Authority.* (1) Requests shall be decided by the FOIA Officer.

(2) A decision to withhold a requested record, to release a record that is exempt from disclosure, or to deny a fee waiver shall be made only after consultation with the General Counsel.

(b) *Form of grant.* (1) When a requested record has been determined to be available, the FOIA Officer shall notify the requester as to when and where the record is available for inspection or, as the case may be, when and how copies will be provided. If fees are due, the FOIA Officer shall state the amount of fees due and the procedures for payment, as described in § 1007.9.

(2) The FOIA Officer shall honor a requester's specified preference of form or format of disclosure (e.g., paper, microform, audiovisual materials, or electronic records) if the record is readily available to the Presidio Trust in the requested form or format or if the record is reproducible by the Presidio Trust with reasonable efforts in the requested form or format.

(3) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), both the requester and the submitter shall be notified of the decision. The notice to the submitter (a copy of which shall be made available to the requester) shall be forwarded a reasonable number of days prior to the date on which disclosure is to be made and shall include:

(i) A statement of the reasons why the submitter's objections were not sustained;

(ii) A specification of the portions of the record to be disclosed, if the submitter's objections were sustained in part; and

(iii) A specified disclosure date.

(4) If a claim of confidentiality has been found frivolous in accordance with § 1007.4(c)(5)(vi) and a determination is made to release the information without consultation with the submitter, the submitter of the information shall be notified of the decision and the reasons therefor a reasonable number of days prior to the date on which disclosure is to be made.

(c) *Form of denial.* (1) A decision withholding a requested record shall be in writing and shall include:

(i) A listing of the names and titles or positions of each person responsible for the denial;

(ii) A reference to the specific exemption or exemptions authorizing the withholding;

(iii) If neither a statute nor an Executive order requires withholding, the sound ground for withholding;

(iv) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(v) A statement that the denial may be appealed and a reference to the procedures in § 1007.7 for appeal.

(2) A decision denying a request for failure to reasonably describe requested records or for other procedural deficiency or because requested records cannot be located shall be in writing and shall include:

(i) A description of the basis of the decision;

(ii) A list of the names and titles or positions of each person responsible; and

(iii) A statement that the matter may be appealed and a reference to the procedures in § 1007.7 for appeal.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined by the FOIA Officer that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(4) Within ten calendar days of receiving of a request for expedited processing, the FOIA Officer shall decide whether to grant the request for expedited processing and shall notify the requester of the decision. If a request for expedited processing is granted, the underlying FOIA request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 1007.6 Time limits for processing initial requests.

(a) *Basic limit.* Requests for records shall be processed promptly. A determination whether to grant or deny a request shall be made within 20 working days after receipt of a request. This determination shall be communicated immediately to the requester.

(b) *Running of basic time limit.* (1) The 20 working day time limit begins to run when a request meeting the requirements of § 1007.3(b) is received at the Presidio Trust.

(2) The running of the basic time limit may be delayed or tolled as explained in § 1007.9 (f), (g) and (h) if a requester:

(i) Has not stated a willingness to pay fees as high as are anticipated and has not sought and been granted a full fee waiver, or

(ii) Has not made a required advance payment.

(c) *Extensions of time.* In the following unusual circumstances, the time limit for acting on an initial request may be extended to the extent reasonably necessary to the proper processing of the request, but in no case may the time limit be extended by more than 20 working days:

(1) The need to search for and collect the requested records from facilities or other establishments that are separate from the main office of the Presidio Trust;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request.

(d) *Notice of extension.* A requester shall be notified in writing of an extension under paragraph (c) of this section. The notice shall state the reason for the extension and the date on which a determination on the request is expected to be made.

(e) *Treatment of delay as denial.* If no determination has been reached at the end of the 20 working day period for deciding an initial request, or an extension thereof under § 1007.6(c), the requester may deem the request denied and may exercise a right of appeal in accordance with § 1007.7.

(f) *Notice of delay.* When a determination cannot be reached within the time limit, or extension thereof, the requester shall be notified of the reason for the delay, of the date on which a determination may be expected, and of the right to treat the delay as a denial for purposes of appeal, including a reference to the procedures for filing an appeal in § 1007.7.

§ 1007.7 Appeals.

(a) *Right of appeal.* A requester may appeal to the Executive Director when:

(1) Records have been withheld;

(2) A request has been denied for failure to describe requested records or for other procedural deficiency or because requested records cannot be located;

(3) A fee waiver has been denied;

(4) A request has not been decided within the time limits provided in § 1007.6; or

(5) A request for expedited processing under § 1007.5(d) has been denied.

(b) *Time for appeal.* An appeal must be received at the office of the Presidio Trust no later than 20 working days after the date of the initial denial, in the

case of a denial of an entire request, or 20 working days after records have been made available, in the case of a partial denial.

(c) *Form of appeal.* (1) An appeal shall be initiated by filing a written notice of appeal. The notice shall be accompanied by copies of the original request and the initial denial and should, in order to expedite the appellate process and give the requester an opportunity to present his or her arguments, contain a brief statement of the reasons why the requester believes the initial denial to have been in error.

(2) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(3) To expedite processing, both the envelope containing a notice of appeal and the face of the notice should bear the legend ''FREEDOM OF INFORMATION APPEAL.''

§ 1007.8 Action on appeals.

(a) *Authority.* Appeals shall be decided by the Executive Director after consultation with the FOIA Officer and the General Counsel.

(b) *Time limit.* A final determination shall be made within 20 working days after receipt of an appeal meeting the requirements of § 1007.7(c).

(c) *Extensions of time.* (1) If the time limit for responding to the initial request for a record was not extended under the provisions of § 1007.6(c) or was extended for fewer than 10 working days, the time for processing of the appeal may be extended to the extent reasonably necessary to the proper processing of the appeal, but in no event may the extension, when taken together with any extension made during processing of the initial request, result in an aggregate extension with respect to any one request of more than 10 working days. The time for processing of an appeal may be extended only if one or more of the unusual circumstances listed in § 1007.6(c) requires an extension.

(2) The appellant shall be advised in writing of the reasons for the extension and the date on which a final determination on the appeal is expected to be dispatched.

(3) If no determination on the appeal has been reached at the end of the 20 working day period, or the extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in the United States District Court for the Northern District of California, as specified in 5 U.S.C. 552(a)(4).

(4) When no determination can be reached within the applicable time limit, the appeal will nevertheless continue to be processed. On expiration of the time limit, the requester shall be informed of the reason for the delay, of the date on which a determination may be reached to be dispatched, and of the right to seek judicial review.

(d) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination. If the determination is to release the requested records or portions thereof, the FOIA Officer shall immediately make the records available. If the determination upholds in whole or part the initial denial of a request for records, the determination shall advise the requester of the right to obtain judicial review in the U.S. District Court for the Northern District of California and shall set forth the names and titles or positions of each person responsible for the denial.

(2) If a requested record (or portion thereof) is being made available over the objections of a submitter made in accordance with § 1007.4(c), the submitter shall be provided notice as described in § 1007.5(b)(3).

§ 1007.9 Fees.

(a) *Policy.* (1) Unless waived pursuant to the provisions of § 1007.10, fees for responding to FOIA requests shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published in the compilation provided under § 1001.7(b) of this chapter. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Trust.

(2) Fees shall not be charged if the total amount chargeable does not exceed the costs of routine collection and processing of the fee. The Trust shall periodically determine the cost of routine collection and processing of a fee and publish such amount in the compilation provided under § 1001.7(b) of this chapter.

(3) Where there is a reasonable basis to conclude that a requester or group of requesters acting in concert has divided a request into a series of requests on a single subject or related subjects to avoid assessment of fees, the requests may be aggregated and fees charged accordingly.

(4) Fees shall be charged to recover the full costs of providing such services as certifying that records are true copies or sending records by a method other than regular mail, when the Trust elects to provide such services.

(5) The following definitions shall apply to this part:

(i) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents or databases. Searches shall be undertaken in the most efficient and least expensive manner possible, consistent with the Presidio Trust's obligations under FOIA and other applicable laws.

(ii) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(iii) A *commercial use request* is a request from or on behalf of a person who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. The intended use of records may be determined on the basis of information submitted by a requester and from reasonable inferences based on the identity of the requester and any other available information.

(iv) An *educational institution* is a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(v) A *noncommercial scientific institution* is an institution that is not operated for commerce, trade or profit and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(vi) A *representative of the news media* is any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that is (or would be) of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. As traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through

telecommunications services), such alternative media would be included in this category. Free-lance journalists may be considered representatives of the news media if they demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. A publication contract or past record of publication, or evidence of a specific free-lance assignment from a news organization may indicate a solid basis for expecting publication.

(b) *Commercial use requests.* (1) A requester seeking records for commercial use shall be charged fees for costs incurred in document search and review (even if the search and review fails to locate records that are not exempt from disclosure) and duplication.

(2) A commercial use requester may not be charged fees for time spent resolving legal and policy issues affecting access to requested records.

(c) *Educational and noncommercial scientific institution requests.* (1) A requester seeking records under the auspices of an educational institution in furtherance of scholarly research or a noncommercial scientific institution in furtherance of scientific research shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged fees for costs incurred in:

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(d) *News media requests.* (1) A representative of the news media shall be charged for document duplication, except that the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Representatives of the news media may not be charged fees for costs incurred in:

(i) Searching for requested records,

(ii) Examining requested records to determine whether they are exempt from mandatory disclosure,

(iii) Deleting reasonably segregable exempt matter,

(iv) Monitoring the requester's inspection of agency records, or

(v) Resolving legal and policy issues affecting access to requested records.

(e) *Other requests.* (1) A requester not covered by paragraphs (b), (c), or (d) of this section shall be charged fees for document search (even if the search fails to locate records that are not exempt from disclosure) and duplication, except that the first two hours of search time and the first 100 pages of paper copies (or the equivalent cost thereof if the records are in some other form) shall be provided without charge.

(2) Such requesters may not be charged for costs incurred in:

(i) Examining requested records to determine whether they are exempt from disclosure,

(ii) Deleting reasonably segregable exempt matter,

(iii) Monitoring the requester's inspection of agency records, or

(iv) Resolving legal and policy issues affecting access to requested records.

(f) *Requests for clarification.* Where a request does not provide sufficient information to determine whether it is covered by paragraph (b), (c), (d), or (e) of this section, the requester should be asked to provide additional clarification. If it is necessary to seek such clarification, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the clarification is received. Requests to requesters for clarification shall be made promptly.

(g) *Notice of anticipated fees.* Where a request does not state a willingness to pay fees as high as anticipated by the Presidio Trust, and the requester has not sought and been granted a full waiver of fees under § 1007.10, the request may be deemed to have not been received for purposes of the time limits established in § 1007.6 until the requester has been notified of and agrees to pay the anticipated fee. Advice to requesters with respect to anticipated fees shall be provided promptly.

(h) *Advance payment.* (1) Where it is anticipated that allowable fees are likely to exceed $250.00, the requester may be required to make an advance payment of the entire fee before processing of his or her request.

(2) Where a requester has previously failed to pay a fee within 30 days of the date of billing, processing of any request from that requester shall ordinarily be suspended until the requester pays any amount still owed, including applicable interest, and makes advance payment of allowable fees anticipated in connection with the request.

(3) Advance payment of fees may not be required except as described in paragraphs (h) (1) and (2) of this section.

(4) Issuance of a notice requiring payment of overdue fees or advance payment shall toll the time limit in § 1007.6 until receipt of payment.

(i) *Form of payment.* Payment of fees should be made by check or money order payable to the Presidio Trust. Where appropriate, the official responsible for handling a request may require that payment by check be made in the form of a certified check.

(j) *Billing procedures.* A bill for collection shall be prepared for each request that requires collection of fees.

(k) *Collection of fees.* The bill for collection or an accompanying letter to the requester shall include a statement that interest will be charged in accordance with the Debt Collection Act of 1982, 31 U.S.C. 3717, and implementing regulations, 4 CFR 102.13, if the fees are not paid within 30 days of the date of the bill for collection is mailed or hand-delivered to the requester. This requirement does not apply if the requester is a unit of State or local government. Other authorities of the Debt Collection Act of 1982 shall be used, as appropriate, to collect the fees.

§ 1007.10 Waiver of fees.

(a) *Statutory fee waiver.* Documents shall be furnished without charge or at a charge reduced below the fees chargeable under § 1007.9 if disclosure of the information is in the public interest because it:

(1) Is likely to contribute significantly to public understanding of the operations or activities of the government and

(2) Is not primarily in the commercial interest of the requester.

(b) *Elimination or reduction of fees.* Ordinarily, in the circumstances where the criteria of paragraph (a) of this section are met, fees will be reduced by twenty-five percent from the fees otherwise chargeable to the requester. In exceptional circumstances, and with the approval of the Executive Director, fees may be reduced below this level or waived entirely.

(c) *Notice of denial.* If a requested statutory fee waiver or reduction is denied, the requester shall be notified in writing. The notice shall include:

(1) A statement of the basis on which the waiver or reduction has been denied;

(2) A listing of the names and titles or positions of each person responsible for the denial; and

(3) A statement that the denial may be appealed to the Executive Director and a description of the procedures in § 1007.7 for appeal.

PART 1008—REQUESTS UNDER THE PRIVACY ACT

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Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 5 U.S.C. 552a.

§ 1008.1 Purpose and scope.

This part contains the regulations of the Presidio Trust implementing section 3 of the Privacy Act. Sections 1008.3 through 1008.10 describe the procedures and policies of the Presidio Trust concerning maintenance of records which are subject to the Privacy Act. Sections 1008.11 through 1008.17 describe the procedure under which individuals may determine whether systems of records subject to the Privacy Act contain records relating to them and the procedure under which they may seek access to existing records. Sections 1008.18 through 1008.24 describe the procedure under which individuals may petition for amendment of records subject to the Privacy Act relating to them.

§ 1008.2 Definitions.

The following terms have the following meanings as used in this part:

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain means maintain, collect, use or disseminate.

Privacy Act means 5 U.S.C. 552a.

Privacy Act Officer means the Presidio Trust official charged with responsibility for carrying out the functions assigned in this part.

Record means any item, collection, or grouping of information about an individual that is maintained by the Presidio Trust, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, or a photograph. Related definitions include:

(1) *System of records* means a group of any records under the control of the Presidio Trust from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(2) *Medical records* means records which relate to the identification, prevention, cure or alleviation of any disease, illness or injury including psychological disorders, alcoholism and drug addiction.

(3) *Personnel records* means records used for personnel management programs or processes such as staffing, employee development, retirement, and grievances and appeals.

(4) *Statistical records* means records in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual.

Routine use means a use of a record for a purpose which is compatible with the purpose for which it was collected.

System manager means the official designated in a system notice as having administrative responsibility for a system of records.

System notice means the notice describing a system of records required by 5 U.S.C. 552a(e)(4) to be published in the **Federal Register** upon establishment or revision of the system of records.

§ 1008.3 Records subject to the Privacy Act.

The Privacy Act applies to all records which the Presidio Trust maintains in a system of records.

§ 1008.4 Standards for maintenance of records subject to the Privacy Act.

(a) *Content of records.* Records subject to the Privacy Act shall contain only such information about an individual as is relevant and necessary to accomplish a purpose of the Presidio Trust required to be accomplished by statute or Executive Order of the President.

(b) *Standards of accuracy.* Records subject to the Privacy Act which are used in making any determination about any individual shall be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making the determination.

(c) *Collection of information.* (1) Information which may be used in making determinations about an individual's rights, benefits, and privileges under Federal programs shall, to the greatest extent practicable, be collected directly from that individual.

(2) In deciding whether collection of information from an individual, as opposed to a third party source, is practicable, the following factors, among others, may be considered:

(i) Whether the nature of the information sought is such that it can only be obtained from a third party;

(ii) Whether the cost of collecting the information from the individual is unreasonable when compared with the cost of collecting it from a third party;

(iii) Whether there is a risk that information collected from third parties, if inaccurate, could result in an adverse determination to the individual concerned;

(iv) Whether the information, if supplied by the individual, would have to be verified by a third party; or (v) Whether provisions can be made for verification, by the individual, of information collected from third parties.

(d) *Advice to individuals concerning uses of information.* (1) Each individual who is asked to supply information about him or herself which will be added to a system of records shall be informed of the basis for requesting the information, how it may be used, and what the consequences, if any, are of not supplying the information.

(2) At a minimum, the notice to the individual must state:

(i) The authority (whether granted by statute or Executive Order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(ii) The principal purpose or purposes for which the information is intended to be used;

(iii) The routine uses which may be made of the information; and

(iv) The effects on the individual, if any, of not providing all or any part of the requested information.

(3)(i) When information is collected on a standard form, the notice to the individual shall be provided on the form, on a tear-off sheet attached to the form, or on a separate sheet, whichever is most practical.

(ii) When information is collected by an interviewer, the interviewer shall provide the individual with a written notice which the individual may retain. If the interview is conducted by telephone, however, the interviewer may summarize the notice for the individual and need not provide a copy to the individual unless the individual requests a copy.

(iii) An individual may be asked to acknowledge, in writing, that the notice required by this section has been provided.

(e) *Records concerning activity protected by the First Amendment.* No record may be maintained describing how any individual exercises rights guaranteed by the First Amendment to the Constitution unless the maintenance of the record is:

(1) Expressly authorized by statute or by the individual about whom the record is maintained; or

(2) Pertinent to and within the scope of an authorized law enforcement activity.

§ 1008.5 Federal Register notices describing systems of records.

The Privacy Act requires publication of a notice in the **Federal Register** describing each system of records subject to the Privacy Act. Such notice will be published prior to the establishment or a revision of the system of records. 5 U.S.C. 552a(e)(4).

§ 1008.6 Assuring integrity of records.

(a) *Statutory requirement.* The Privacy Act requires that records subject to the Privacy Act be maintained with appropriate administrative, technical and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained, 5 U.S.C. 552a(e)(10).

(b) *Records security.* Whether maintained in physical or electronic form, records subject to the Privacy Act shall be maintained in a secure manner commensurate with the sensitivity of the information contained in the system of records. The Privacy Act Officer will periodically review these security measures to ensure their adequacy.

§ 1008.7 Conduct of employees.

(a) *Handling of records subject to the Privacy Act.* Employees whose duties require handling of records subject to the Privacy Act shall, at all times, take care to protect the integrity, security and confidentiality of these records.

(b) *Disclosure of records.* No employee of the Presidio Trust may disclose records subject to the Privacy Act unless disclosure is permitted under § 1008.9 or is to the individual to whom the record pertains.

(c) *Alteration of records.* No employee of the Presidio Trust may alter or destroy a record subject to the Privacy Act unless such alteration or destruction is:

(1) Properly undertaken in the course of the employee's regular duties; or

(2) Required by a decision under § § 1008.18 through 1008.23 or the decision of a court of competent jurisdiction.

§ 1008.8 Government contracts.

(a) *Required contract provisions.* When a contract provides for the operation by or on behalf of the Presidio Trust of a system of records to accomplish a Presidio Trust function, the contract shall, consistent with the Presidio Trust's authority, cause the requirements of 5 U.S.C. 552a and the regulations contained in this part to be applied to such system.

(b) *System manager.* A regular employee of the Presidio Trust will be the manager for a system of records operated by a contractor.

§ 1008.9 Disclosure of records.

(a) *Prohibition of disclosure.* No record contained in a system of records may be disclosed by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) *General exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) To those officers or employees of the Presidio Trust who have a need for the record in the performance of their duties; or

(2) Required by the Freedom of Information Act, 5 U.S.C. 552.

(c) *Specific exceptions.* The prohibition contained in paragraph (a) of this section does not apply where disclosure of the record would be:

(1) For a routine use which has been described in a system notice published in the **Federal Register**;

(2) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code.

(3) To a recipient who has provided the system manager responsible for the system in which the record is maintained with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(4) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(5) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Presidio Trust specifying the particular portion desired and the law enforcement activity for which the record is sought;

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(7) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(8) To the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(9) Pursuant to the order of a court of competent jurisdiction; or

(10) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(f)).

(d) *Reviewing records prior to disclosure.* (1) Prior to any disclosure of a record about an individual, unless disclosure is required by the Freedom of Information Act, reasonable efforts shall be made to ensure that the records are accurate, complete, timely and relevant for agency purposes.

(2) When a record is disclosed in connection with a Freedom of Information Act request made under this part and it is appropriate and administratively feasible to do so, the requester shall be informed of any information known to the Presidio Trust indicating that the record may not be fully accurate, complete, or timely.

§ 1008.10 Accounting for disclosures.

(a) *Maintenance of an accounting.* (1) Where a record is disclosed to any

person, or to another agency, under any of the specific exceptions provided by § 1008.9(c), an accounting shall be made.

(2) The accounting shall record:

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency; and

(ii) The name and address of the person or agency to whom the disclosure was made.

(3) Accountings prepared under this section shall be maintained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(b) *Access to accountings.* (1) Except for accountings of disclosures made under § 1008.9(c)(5), accountings of all disclosures of a record shall be made available to the individual to whom the record relates at the individual's request.

(2) An individual desiring access to an accounting of disclosures of a record pertaining to the individual shall submit a request by following the procedures of § 1008.13.

(c) *Notification of disclosure.* When a record is disclosed pursuant to § 1008.9(c)(9) as the result of the order of a court of competent jurisdiction, reasonable efforts shall be made to notify the individual to whom the record pertains as soon as the order becomes a matter of public record.

§ 1008.11 Request for notification of existence of records: Submission.

(a) *Submission of requests.* (1) Individuals desiring to determine under the Privacy Act whether a system of records contains records pertaining to them shall address inquiries to the Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052, unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring to determine whether records pertaining to them are maintained in two or more systems shall make a separate inquiry concerning each system.

(b) *Form of request.* (1) An inquiry to determine whether a system of records contains records pertaining to an individual shall be in writing.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''PRIVACY ACT INQUIRY.''

(3) The request shall state that the individual is seeking information concerning records pertaining to him or herself and shall supply such additional identifying information, if any, as is called for in the system notice describing the system.

(4) Individuals who have reason to believe that information pertaining to them may be filed under a name other than the name they are currently using (e.g., maiden name), shall include such information in the request.

§ 1008.12 Requests for notification of existence of records: Action on.

(a) *Decisions on request.* (1) Individuals inquiring to determine whether a system of records contains records pertaining to them shall be promptly advised whether the system contains records pertaining to them unless:

(i) The records were compiled in reasonable anticipation of a civil action or proceeding; or

(ii) The system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking.

(2) If the records were compiled in reasonable anticipation of a civil action or proceeding or the system of records is one which has been excepted from the notification provisions of the Privacy Act by rulemaking, the individuals will be promptly notified that they are not entitled to notification of whether the system contains records pertaining to them.

(b) *Authority to deny requests.* A decision to deny a request for notification of the existence of records shall be made by the Privacy Act officer in consultation with the General Counsel.

(c) *Form of decision.* (1) No particular form is required for a decision informing individuals whether a system of records contains records pertaining to them.

(2) A decision declining to inform an individual whether or not a system of records contains records pertaining to him or her shall be in writing and shall:

(i) State the basis for denial of the request;

(ii) Advise the individual that an appeal of the declination may be made to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052; and

(iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision declining a request for notification of the existence of records involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial;

(ii) Include the name, position title, and address of the official responsible for the denial; and (iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions declining a request for notification of the existence of records made pursuant to paragraphs (c)(2) and (c)(3) of this section shall be provided to the Privacy Act Officer.

§ 1008.13 Requests for access to records.

The Privacy Act permits individuals, upon request, to gain access to their records or to any information pertaining to them which is contained in a system and to review the records and have a copy made of all or any portion thereof in a form comprehensive to them. 5 U.S.C. 552a(d)(1). A request for access shall be submitted in accordance with the procedures in this part.

§ 1008.14 Requests for access to records: Submission.

(a) *Submission of requests.* (1) Requests for access to records shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to some other official or officials.

(2) Individuals desiring access to records maintained in two or more separate systems shall submit a separate request for access to the records in each system.

(b) *Form of request.* (1) A request for access to records subject to the Privacy Act shall be in writing and addressed to Privacy Act Officer, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(2) To expedite processing, both the envelope containing a request and the face of the request should bear the legend ''PRIVACY ACT REQUEST FOR ACCESS.''

(3) Requesters shall specify whether they seek all of the records contained in the system which relate to them or only some portion thereof. If only a portion of the records which relate to the individual are sought, the request shall reasonably describe the specific record or records sought.

(4) If the requester seeks to have copies of the requested records made, the request shall state the maximum amount of copying fees which the requester is willing to pay. A request which does not state the amount of fees the requester is willing to pay will be treated as a request to inspect the requested records. Requesters are further notified that under § 1008.15(d) the failure to state willingness to pay fees as high as are anticipated by the

Presidio Trust will delay processing of a request.

(5) The request shall supply such identifying information, if any, as is called for in the system notice describing the system.

(6) Requests failing to meet the requirements of this paragraph shall be returned to the requester with a written notice advising the requester of the deficiency in the request.

§ 1008.15 Requests for access to records: Initial decision.

(a) *Decisions on requests.* A request made under this part for access to a record shall be granted promptly unless the record:

(1) Was compiled in reasonable anticipation of a civil action or proceeding; or

(2) Is contained in a system of records which has been excepted from the access provisions of the Privacy Act by rulemaking.

(b) *Authority to deny requests.* A decision to deny a request for access under this part shall be made by the Privacy Act Officer in consultation with the General Counsel.

(c) *Form of decision.* (1) No particular form is required for a decision granting access to a record. The decision shall, however, advise the individual requesting the record as to where and when the record is available for inspection or, as the case may be, where and when copies will be available. If fees are due under § 1008.15(d), the individual requesting the record shall also be notified of the amount of fees due or, if the exact amount has not been determined, the approximate amount of fees due.

(2) A decision denying a request for access, in whole or part, shall be in writing and shall:

(i) State the basis for denial of the request;

(ii) Contain a statement that the denial may be appealed to the Executive Director pursuant to § 1008.16 by writing to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052; and (iii) State that the appeal must be received by the foregoing official within 20 working days of the date of the decision.

(3) If the decision denying a request for access involves records which fall under the jurisdiction of another agency, the individual shall be informed in a written response which shall:

(i) State the reasons for the denial;

(ii) Include the name, position title, and address of the official responsible for the denial; and

(iii) Advise the individual that an appeal of the declination may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of decisions denying requests for access made pursuant to paragraphs (c)(2) and (c)(3) of this section will be provided to the Privacy Act Officer.

(d) *Fees.* (1) No fees may be charged for the cost of searching for or reviewing a record in response to a request made under § 1008.14.

(2) Unless the Privacy Act Officer determines that reduction or waiver of fees is appropriate, fees for copying a record in response to a request made under § 1008.14 shall be charged in accordance with the provisions of this section and the current schedule of charges determined by the Executive Director and published in the compilation provided under § 1001.7(b) of this chapter. Such charges shall be set at the level necessary to recoup the full allowable direct costs to the Trust.

(3) Where it is anticipated that fees chargeable in connection with a request will exceed the amount the person submitting the request has indicated a willingness to pay, the Privacy Act Officer shall notify the requester and shall not complete processing of the request until the requester has agreed, in writing, to pay fees as high as are anticipated.

§ 1008.16 Requests for notification of existence of records and for access to records: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to records under the jurisdiction of another agency, individuals who have been notified that they are not entitled to notification of whether a system of records contains records pertaining to them or have been denied access, in whole or part, to a requested record may appeal to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received by the Executive Director no later than 20 working days after the date of the initial decision on a request.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within 20 working days of the date of the initial decision on the request.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial request and the decision on the request.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the initial request to have been in error.

(3) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

(d) *Action on appeals.* (1) Appeals from decisions on initial requests made pursuant to § § 1008.11 and 1008.14 shall be decided for the Presidio Trust by the Executive Director after consultation with the General Counsel.

(2) The decision on an appeal shall be in writing and shall state the basis for the decision.

§ 1008.17 Requests for access to records: Special situations.

(a) *Medical records.* (1) Medical records shall be disclosed to the individual to whom they pertain unless it is determined, in consultation with a medical doctor, that disclosure should be made to a medical doctor of the individual's choosing.

(2) If it is determined that disclosure of medical records directly to the individual to whom they pertain could have an adverse effect on that individual, the individual may designate a medical doctor to receive the records and the records will be disclosed to that doctor.

(b) *Inspection in presence of third party.* (1) Individuals wishing to inspect records pertaining to them which have been opened for their inspection may, during the inspection, be accompanied by a person of their own choosing.

(2) When such a procedure is deemed appropriate, individuals to whom the records pertain may be required to furnish a written statement authorizing discussion of their records in the accompanying person's presence.

§ 1008.18 Amendment of records.

The Privacy Act permits individuals to request amendment of records pertaining to them if they believe the records are not accurate, relevant, timely or complete. 5 U.S.C. 552a(d)(2). A request for amendment of a record shall be submitted in accordance with the procedures in this part.

§ 1008.19 Petitions for amendment: Submission and form.

(a) *Submission of petitions for amendment.* (1) A request for amendment of a record shall be submitted to the Privacy Act Officer unless the system notice describing the system prescribes or permits submission to a different official or officials. If an individual wishes to request amendment of records located in more than one system, a separate petition must be submitted with respect to each system.

(2) A petition for amendment of a record may be submitted only if the

individual submitting the petition has previously requested and been granted access to the record and has inspected or been given a copy of the record.

(b) *Form of petition.* (1) A petition for amendment shall be in writing and shall specifically identify the record for which amendment is sought.

(2) The petition shall state, in detail, the reasons why the petitioner believes the record, or the objectionable portion thereof, is not accurate, relevant, timely or complete. Copies of documents or evidence relied upon in support of these reasons shall be submitted with the petition.

(3) The petition shall state, specifically and in detail, the changes sought in the record. If the changes involve rewriting the record or portions thereof or involve adding new language to the record, the petition shall propose specific language to implement the changes.

§ 1008.20 Petitions for amendment: Processing and initial decision.

(a) *Decisions on petitions.* In reviewing a record in response to a petition for amendment, the accuracy, relevance, timeliness and completeness of the record shall be assessed against the criteria set out in § 1008.4.

(b) *Authority to decide.* A decision on a petition for amendment shall be made by the Privacy Act Officer in consultation with the General Counsel.

(c) *Acknowledgment of receipt.* Unless processing of a petition is completed within ten working days, the receipt of the petition for amendment shall be acknowledged in writing by the Privacy Act Officer.

(d) *Inadequate petitions.* (1) If a petition does not meet the requirements of § 1008.19, the petitioner shall be so advised and shall be told what additional information must be submitted to meet the requirements of § 1008.19.

(2) If the petitioner fails to submit the additional information within a reasonable time, the petition may be rejected. The rejection shall be in writing and shall meet the requirements of paragraph (e) of this section.

(e) *Form of decision.* (1) A decision on a petition for amendment shall be in writing and shall state concisely the basis for the decision.

(2) If the petition for amendment is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision;

(ii) Advise the petitioner that the rejection may be appealed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052; and

(iii) State that the appeal must be received by the foregoing official within 20 working days of the decision.

(3) If the petition for amendment involves records which fall under the jurisdiction of another agency and is rejected, in whole or part, the petitioner shall be informed in a written response which shall:

(i) State concisely the basis for the decision;

(ii) Include the name, position title, and address of the official responsible for the denial; and

(iii) Advise the individual that an appeal of the rejection may be made only to the appropriate official of the relevant agency, and include that official's name, position title, and address.

(4) Copies of rejections of petitions for amendment made pursuant to paragraphs (e)(2) and (e)(3) of this section will be provided to the Privacy Act Officer.

(f) *Implementation of initial decision.* If a petition for amendment is accepted, in whole or part, the system manager maintaining the record shall:

(1) Correct the record accordingly and,

(2) Where an accounting of disclosures has been made pursuant to § 1008.10, advise all previous recipients of the record that the correction was made and the substance of the correction.

§ 1008.21 Petitions for amendment: Time limits for processing.

(a) *Acknowledgment of receipt.* The acknowledgment of receipt of a petition required by § 1008.20(c) shall be dispatched not later than ten working days after receipt of the petition by the Privacy Act Officer, unless a decision on the petition has been previously dispatched.

(b) *Decision on petition.* A petition for amendment shall be processed promptly. A determination whether to accept or reject the petition for amendment shall be made within 30 working days after receipt of the petition by the system manager responsible for the system containing the challenged record.

(c) *Suspension of time limit.* The 30 working day time limit for a decision on a petition shall be suspended if it is necessary to notify the petitioner, pursuant to § 1008.20(d), that additional information in support of the petition is required. Running of the 30 working day time limit shall resume on receipt of the additional information by the system manager responsible for the system containing the challenged record.

(d) *Extensions of time.* (1) The 30 working day time limit for a decision on a petition may be extended if the Privacy Act Officer determines that an extension is necessary for one of the following reasons:

(i) A decision on the petition requires analysis of voluminous record or records;

(ii) Some or all of the challenged records must be collected from facilities other than the facility at which the Privacy Act Officer is located; or

(iii) Some or all of the challenged records are of concern to another agency of the Federal Government whose assistance and views are being sought in processing the request.

(2) If the official responsible for making a decision on the petition determines that an extension is necessary, the official shall promptly inform the petitioner of the extension and the date on which a decision is expected to be dispatched.

§ 1008.22 Petitions for amendment: Appeals.

(a) *Right of appeal.* Except for appeals pertaining to records under the jurisdiction of another agency, where a petition for amendment has been rejected in whole or in part, the individual submitting the petition may appeal the denial to the Executive Director.

(b) *Time for appeal.* (1) An appeal must be received no later than 20 working days after the date of the decision on a petition.

(2) The Executive Director may, for good cause shown, extend the time for submission of an appeal if a written request for additional time is received within 20 working days of the date of the decision on a petition.

(c) *Form of appeal.* (1) An appeal shall be in writing and shall attach copies of the initial petition and the decision on that petition.

(2) The appeal shall contain a brief statement of the reasons why the appellant believes the decision on the petition to have been in error.

(3) The appeal shall be addressed to the Executive Director, The Presidio Trust, P.O. Box 29052, San Francisco, CA 94129–0052.

§ 1008.23 Petitions for amendment: Action on appeals.

(a) *Authority.* Appeals from decisions on initial petitions for amendment shall be decided by the Executive Director, in consultation with the General Counsel.

(b) *Time limit.* (1) A final determination on any appeal shall be made within 30 working days after receipt of the appeal.

(2) The 30 working day period for decision on an appeal may be extended, for good cause shown, by the Executive Director. If the 30 working day period is extended, the individual submitting the appeal shall be notified of the extension and of the date on which a determination on the appeal is expected to be dispatched.

(c) *Form of decision.* (1) The final determination on an appeal shall be in writing and shall state the basis for the determination.

(2) If the determination upholds, in whole or part, the initial decision rejecting the petition for amendment, the determination shall also advise the individual submitting the appeal:

(i) Of his or her right to file a concise statement of the reasons for disagreeing with the decision of the Presidio Trust;

(ii) Of the procedure established by § 1008.24 for the filing of the statement of disagreement;

(iii) That the statement which is filed will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Presidio Trust, a brief statement by the Presidio Trust summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the challenged record will be provided a copy of any statement of dispute to the extent that an accounting of disclosure was maintained; and

(v) Of his or her right to seek judicial review of the Presidio Trust's refusal to amend the record.

(3) If the determination reverses, in whole or in part, the initial decision rejecting the petition for amendment, the system manager responsible for the system containing the challenged record shall be directed to:

(i) Amend the challenged record accordingly; and

(ii) If an accounting of disclosures has been made, advise all previous recipients of the record of the amendment and its substance.

§ 1008.24 Statements of disagreement.

(a) *Filing of statement.* If the determination of the Executive Director under § 1008.23 rejects in whole or part, a petition for amendment, the individual submitting the petition may file with the Privacy Act Officer a concise written statement setting forth the reasons for disagreement with the determination of the Presidio Trust.

(b) *Disclosure of statements.* In any disclosure of a record containing information about which an individual has filed a statement of disagreement under this section which occurs after the filing of the statement, the disputed portion of the record will be clearly noted and the recipient shall be provided copies of the statement of disagreement. If appropriate, a concise statement of the reasons of the Presidio Trust for not making the requested amendments may also be provided to the recipient.

(c) *Maintenance of statements.* System managers shall develop procedures to assure that statements of disagreement filed with them shall be maintained in such a way as to assure dissemination of the statements to recipients of the records to which the statements pertain.

PART 1009—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT

Sec.

1009.1 Purpose.
1009.2 Procedure for filing claims.
1009.3 Denial of claims.
1009.4 Payment of claims.
1009.5 Indemnification of Presidio Trust directors and employees.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note); 28 U.S.C. 2672.

§ 1009.1 Purpose.

The purpose of this part is to establish procedures for the filing and settlement of claims under the Federal Tort Claims Act (in part, 28 U.S.C. secs. 2401(b), 2671–2680, as amended by Pub. L. 89–506, 80 Stat. 306). The officers to whom authority is delegated to settle tort claims shall follow and be guided by the regulations issued by the Attorney General prescribing standards and procedures for settlement of tort claims (28 CFR part 14).

§ 1009.2 Procedure for filing claims.

(a) The procedure for filing and the contents of claims shall be pursuant to 28 CFR 14.2, 14.3 and 14.4.

(b) Claims shall be filed directly with the Presidio Trust.

(c) Upon receipt of a claim, the time and date of receipt shall be recorded. The claim shall be forwarded with the investigative file immediately to the General Counsel for determination.

§ 1009.3 Denial of claims.

Denial of a claim shall be communicated as provided by 28 CFR 14.9.

§ 1009.4 Payment of claims.

(a) When an award of $2,500 or less is made, the voucher signed by the claimant shall be transmitted for payment to the Presidio Trust. When an award over $2,500 is made, transmittal for payment will be made as prescribed by 28 CFR 14.10.

(b) Prior to payment, appropriate releases shall be obtained as provided in 28 CFR 14.10.

§ 1009.5 Indemnification of Presidio Trust directors and employees.

(a) The Presidio Trust may indemnify a Presidio Trust director or employee who is personally named as a defendant in any civil suit in state or federal court or an arbitration proceeding or other proceeding seeking damages against a Presidio Trust director or employee personally, for any verdict, judgment, or other monetary award which is rendered against such director or employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of his or her duties or employment and that such indemnification is in the interest of the Presidio Trust as determined by

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(b) The Presidio Trust may settle or compromise a personal damage claim against a Presidio Trust director or employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of the duties or employment of the director or employee and that such settlement or compromise is in the interest of the Presidio Trust as determined by:

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(c) The Presidio Trust will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award, unless exceptional circumstances exist as determined by:

(1) the Board, with respect to claims against an employee; or

(2) a majority of the Board, exclusive of the director against whom claims have been made, with respect to claims against a director.

(d) A Presidio Trust director or employee may request indemnification to satisfy a verdict, judgment, or award entered against the director or employee. The director or employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, in a timely manner to the General Counsel, who shall make a recommended disposition

of the request. Where appropriate, the Presidio Trust shall seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Board for decision. In the event that a claim is made against the General Counsel, the Chair shall designate a director or employee of the Trust to fulfill the duties otherwise assigned to the General Counsel under this section.

(e) Any payment under this section either to indemnify a Presidio Trust director or employee or to settle a personal damage claim shall be contingent upon the availability of funds.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 98–13]

Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim regulation with request for comments.

SUMMARY: The Copyright Office of the Library of Congress is issuing interim regulations and requesting comment on the requirements by which a copyright owner or its agent may provide notice to libraries and archives that a published work in the final 20 years of its extended term of copyright is subject to normal commercial exploitation or that a copy or phonorecord of the work can be obtained at a reasonable price. The Office is issuing interim regulations in order to have the notice requirements in place on January 1, 1999. Final regulations will be promulgated following the Office's review of public comments.

EFFECTIVE DATE: The interim regulations are effective January 1, 1999. Comments must be submitted on or before February 15, 1999. Reply comments must be submitted on or before April 1, 1999.

ADDRESSES: An original and fifteen copies of the comments shall be delivered to: Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C., or mailed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Jennifer L. Hall, Senior Attorney, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Facsimile: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1998, President Clinton signed into law the Sonny Bono Copyright Term Extension Act (''the Act''), Public Law 105–298, 112 Stat. 2827 (1998). The Act amended the copyright law, title 17 United States Code, to extend for an additional 20 years the term of copyright protection in the United States. With respect to the extended 20-year term, the Act added a limited new exemption for certain libraries and archives in section 108 of the copyright law. Under new section 108(h), during the last 20 years of any term of copyright protection of a published work, a library or archives (including a nonprofit educational institution functioning as such), may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that certain conditions set forth in the law do not apply. 17 U.S.C. 108(h)(1). Specifically, no reproduction, distribution, display, or performance is authorized under the subsection if: (A) the work is subject to normal commercial exploitation; (B) a copy or phonorecord of the work can be obtained at a reasonable price; or (C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies. *Id.* 108(h)(2). The new exemption does not apply to unpublished works. *Id.* 108(h)(1). It also does not apply to subsequent uses by users other than the library or archives. *Id.* 108(h)(3).

Under the interim regulations set forth at 37 CFR 201.39, copyright owners may file with the Copyright Office a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price. The Notice shall be accompanied by a filing fee of $50 for the first work, and $20 for each additional work, made payable in check, money order or bank draft to the Register of Copyrights. The Office will not provide printed forms for the Notices, but will provide a required format, which is set out in Appendix A to this notice and will be available from the Copyright Office website (http://lcweb.loc.gov/copyright). The regulations specify that the Notice must be provided on 8½ x 11 inch paper with a one-inch margin.

Copyright owners or their agents may file the Notice at any time during the work's extended 20-year term, and thereafter a library or archives could not claim the exemption with respect to the identified work. Until such notice is filed, however, a library or archive is free to use a published work in its last 20 years of copyright term as provided under section 108(h) unless its reasonable investigation otherwise reveals that the work is subject to normal commercial exploitation or availability at a reasonable price. The Office is inquiring whether the final regulations should permit copyright owners to file a Notice for a work before its extended term begins and, if so, how much sooner.

Due to the nature of the filing as a representation by the copyright owner that a particular work is subject to normal commercial exploitation or reasonable availability, the Notice to Librarians and Archives cannot be a one-time filing to cover the entire 20-year period. Instead, copyright owners will need to refile the Notice periodically (e.g., every five years) in order to reassert the facts of commercial availability or reasonable price with respect to the work. For purposes of the interim regulations, the Office is requiring a declaration under penalty of perjury by the copyright owner or its agent that the work identified is subject to normal commercial exploitation, or that a copy or phonorecord of the work is available at a reasonable price. The Office is also requiring contact information for the person or entity that can provide information concerning the work's normal commercial exploitation or availability at a reasonable price. Additional information concerning the work's commercial availability may be provided, but is not required. The Office is inquiring whether the Notice should require additional information with respect to a work's commercial availability.

Because any number of works may share the same title, a copyright owner choosing to file a Notice to Libraries and Archives under these regulations will be required to identify his or her works by reference not only to the work's title, but also to the type of work (e.g., music, motion picture, book, photograph,

illustration, map, article in a periodical, painting, sculpture, sound recording, etc.); the edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text); the author's name; the year of first publication; the year the work first secured federal copyright through publication with notice or registration; and the renewal registration number (except for foreign works in which copyright is restored pursuant to 17 U.S.C. 104A). The original copyright registration number may be provided but is not required. If a work is untitled, then the copyright owner will be required to provide a brief description of the work (e.g., black-and-white photo of train station in Cleveland, Ohio, 1923). The Notice must identify the copyright owner or the owner of exclusive rights on whose behalf the Notice is filed. If the copyright owner is not owner of all rights, then the Notice must specify the rights owned (e.g., the right to reproduce/distribute/ publicly display/ publicly perform the work or to create a derivative work). Information on how the Office can contact the person submitting the notice is required. The Office is inquiring whether a new or amended Notice should be required if the copyright owner transfers or assigns rights in the work to another party or publisher, or if the information reported in a Notice otherwise changes.

To accommodate copyright owners who wish to file Notices for a number of published works, a single Notice may be filed for a group of works that have entered their final 20 years of copyright term. Such a filing will be permitted for a filing fee of $50 for the first work and $20 for each additional work, provided that: (1) all the works are by the same author; (2) all the works are owned by the same copyright owner or owner of the exclusive rights therein (and if the claimant is not owner of all rights, the claimant must own the same rights with respect to all works in the group); (3) all the works first secured federal copyright in the same year, through either publication with notice or registration as an unpublished work; (4) all the works were first published in the same year; (5) the person or entity that the Copyright Office should contact concerning the Notice is the same for all the works; and (6) the person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price is the same for all the works. Each of these conditions for group filing is necessary to properly identify the works, to facilitate processing of the Notices, and to make the information available for public inspection in a timely manner. The first work in a group will be identified using the same required format used for all Notices to Libraries and Archives, which will indicate whether the filing is a group, but each additional work in the group will be identified on a separate continuation sheet. The required format for the continuation sheet is set out in Appendix A to this notice and will be available from the Copyright Office website. The information in the Notices will be entered into the Copyright Office History Documents (COHD) file, which is publicly available, both at the Copyright Office and through the Copyright Office website (http://lcweb.loc.gov/copyright).

Because the extension of copyright term was effective upon enactment of the Act and because all terms of copyright run to the end of the calendar year in which they would otherwise expire, 17 U.S.C. 304, the first works to be affected by term extension are those whose terms of protection would have expired on December 31, 1998. These include works that secured copyright in 1923 and were properly renewed in 1950–51, as well as certain foreign works whose copyrights were restored under 17 U.S.C. 104A. The additional 20 years of copyright protection for these works will commence on January 1, 1999. That date is the first date on which libraries and archives are entitled to exploit those works under the new section 108(h) exemption. In order to have regulations governing Notice to Libraries and Archives in place on that date, the Copyright Office is establishing interim regulations effective on January 1, 1999, and requesting comments for consideration before promulgating final regulations.

Questions for Public Comment

The Copyright Office is requesting public comment on the following:

1. For how long should a Notice to Libraries and Archives be effective? Should a copyright owner be required to refile the Notice to Libraries and Archives periodically? If so, what is the preferable time period?

2. Should copyright owners be permitted to file the Notice to Libraries and Archives prior to the commencement of the final 20 years of copyright term? If so, how long before the commencement of the final 20 years should they be permitted to file the Notice?

3. Should the final regulations require that new Notices to Libraries and Archives be filed upon adoption of the final regulations, or should Notices filed pursuant to the interim regulations remain valid? The answer to this question is likely to depend on whether the final regulations require more information in the Notices than is required by the interim regulations.

4. Besides the information set forth in § 201.39(c) of the interim regulations, should a copyright owner provide any additional information in a Notice to Libraries and Archives? Should any of the information required or requested under the interim regulations not be required or requested under the final regulations? Should any of the optional information be required, or any of the required information made optional?

5. Under the final regulations, what information should a copyright owner provide with respect to a work's normal commercial exploitation and/or availability at a reasonable price? Is it sufficient to require (1) a declaration under penalty of perjury by the copyright owner that a work is subject to normal commercial exploitation or availability at a reasonable price; and (2) contact information where libraries and archives may obtain further information on the work's exploitation or availability; and to provide an option for additional information concerning the work's commercial availability?

6. If, after filing a Notice to Libraries and Archives, the copyright owner transfers or assigns a work, or transfers or assigns rights in a work, should the new copyright owner or its agent be required to submit a new or amended Notice? Should the regulations otherwise require the filing of an amended Notice in the event of a change in any information reported in the Notice?

7. Are there types of works (e.g., individual contributions to a periodical or other collective work that may not have been separately registered) which will present particular issues or problems that must be specifically addressed in the regulations? What are those problems and how should they be addressed? Should any additional information be required with respect to such works?

List of Subjects in 37 CFR Part 201

Copyright.

Interim Regulations

For the reasons set forth in the preamble, Part 201 of Title 37 of the Code of Federal Regulations is amended to read as follows:

PART 201—GENERAL PROVISIONS

1. The authority for Part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Section 201.39 is added to read as follows:

§ 201.39 Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price.

(a) General. This section prescribes rules under which copyright owners or their agents may provide notice to qualified libraries and archives (including a nonprofit educational institution that functions as such) that a published work in its last 20 years of copyright protection is subject to normal commercial exploitation, or that a copy or phonorecord of the work can be obtained at a reasonable price, for purposes of section 108(h)(2) of title 17 of the United States Code.

(b) Format. The Copyright Office provides a required format for a Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price, and for continuation sheets for group notices. The required format is set out in Appendix A to this section, and are available from the Copyright Office website (http://lcweb.loc.gov/copyright). The Copyright Office does not provide printed forms. The Notice shall be in English (except for an original title, which may be in another language), typed or printed legibly in dark ink, and shall be provided on 8½×11 inch white paper with a one-inch margin.

(c) Required Content. A ''Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price'' shall be identified as such by prominent caption or heading, and shall include the following:

(1) The acronym NLA in capital, and preferably bold, letters in the top right-hand corner of the page;

(2) A check-box just below the acronym NLA indicating whether continuation sheets for additional works are attached;

(3) The title of the work, or if untitled, a brief description of the work;

(4) The author(s) of the work;

(5) The type of work (e.g., music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.);

(6) The edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, translation, French version). If there is no information relating to the edition or version of the work, the notice should so state;

(7) The year of first publication;

(8) The year the work first secured federal copyright through publication with notice or registration as an unpublished work;

(9) The copyright renewal registration number (except this information is not required for foreign works in which copyright is restored pursuant to 17 U.S.C. 104A);

(10) The name of the copyright owner (or the owner of exclusive rights);

(11) If the copyright owner is not the owner of all rights, a specification of the rights owned (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work);

(12) The name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that the Copyright Office should contact concerning the Notice;

(13) The full legal name, address, telephone number, fax number (if any) and e-mail address (if any) of the person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price; and

(14) A declaration made under penalty of perjury that the work identified is subject to normal commercial exploitation, or that a copy or phonorecord of the work is available at a reasonable price.

(d) Additional content. A Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price may include the following:

(1) The original copyright registration number of the work; and

(2) Additional information concerning the work's normal commercial exploitation or availability at a reasonable price.

(e) Signature. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price shall include the signature of the copyright owner or its agent. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Notice, and by the date of signature.

(f) Multiple works. A Notice to Libraries and Archives may be filed for more than one work. The first work shall be identified using the format required for all Notices to Libraries and Archives. Each additional work in the group must be identified on a separate continuation sheet. The required format for the continuation sheet is set out in Appendix B to this section, and is available from the Copyright Office website (http://lcweb.loc.gov/copyright). A group filing is permitted provided that:

(1) All the works are by the same author;

(2) All the works are owned by the same copyright owner or owner of the exclusive rights therein. If the claimant is not owner of all rights, the claimant must own the same rights with respect to all works in the group;

(3) All the works first secured federal copyright in the same year, through either publication with notice or registration as an unpublished work;

(4) All the works were first published in the same year;

(5) The person or entity that the Copyright Office should contact concerning the Notice is the same for all the works; and

(6) The person or entity that Libraries and Archives may contact concerning the work's normal commercial exploitation or availability at reasonable price is the same for all the works.

(g)—Filing—(1) Method of Filing. The Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price should be addressed to: NLA, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by hand, it should be delivered during normal business hours, 8:30 a.m. to 5:00 p.m., to the Public Information Office, Room LM–401, James Madison Memorial Building, Library of Congress, 101 Independence Avenue, SE., Washington, DC.

(2) Amount. Each Notice shall be accompanied by a filing fee of $50, and (if more than one work is identified in the Notice), $20 for each additional work.

(3) Method of Payment—(i) Checks, money orders, or bank drafts. The Copyright Office will accept checks, money orders, or bank drafts made payable to the Register of Copyrights. Remittances must be redeemable without service or exchange fees through a United States institution, must be payable in United States dollars, and must be imprinted with American Banking Association routing numbers. Postal money orders that are negotiable only at a post office and international money orders are not acceptable. CURRENCY IS NOT ACCEPTED.

(ii) Copyright Office Deposit Account. The Copyright Office maintains a system of Deposit Accounts for the convenience of those who frequently use its services. The system allows an individual or firm to establish a Deposit Account in the Copyright Office and to make advance deposits into that

account. Deposit Account holders can charge copyright fees against the balance in their accounts instead of sending separate remittances with each request for service. For information on Deposit Accounts, visit the Copyright Office website or write: Copyright Office, Library of Congress, Washington, DC 20559–6000, and request a copy of Circular 5, ''How to Open and Maintain a Deposit Account in the Copyright Office.''

Appendix A to § 201.39—Required format of Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

NLA
☐ Check box if continuation sheets for additional works are attached.

Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____.
2. Author(s) of the work: _____.
3. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____.
4. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, ''No information available'': _____.
5. Year of first publication: _____.
6. Year the work first secured federal copyright through publication with notice or registration as an unpublished work: _____.
7. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____.
8. Full legal name of the copyright owner (or the owner of exclusive rights): _____.
9. The person or entity identified in space #8 owns:
☐ all rights.
☐ the following rights (e.g., the right to reproduce/distribute/publicly display/publicly perform the work or to prepare a derivative work): _____.
10. Person or entity that the Copyright Office should contact concerning the Notice:
☐ Name: _____
☐ Address: _____
☐ Telephone: _____
☐ Fax number (if any): _____
☐ E-mail address (if any): _____
11. Person or entity that libraries and archives may contact concerning the work's normal commercial exploitation or availability at a reasonable price:
☐ Name: _____
☐ Address: _____
☐ Telephone: _____
☐ Fax number (if any): _____
☐ E-mail address (if any): _____

Additional Content (OPTIONAL):

12. Original copyright registration number: _____
13. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____

Declaration:

I declare under penalty of perjury under the laws of the United States:
☐ that each work identified in this notice is subject to normal commercial exploitation.
☐ that a copy or phonorecord of each work identified in this notice is available at a reasonable price.
Signature: _____
Date: _____
☐ Typed or printed name: _____
☐ Title: _____

Appendix B to § 201.39—Required format for Continuation Sheet

NLA CON
Page ____of ____Pages.

Continuation Sheet for NLA Notice to Libraries and Archives of Normal Commercial Exploitation or Availability at Reasonable Price

1. Title of the work (or, if untitled, a brief description of the work): _____.
2. Type of work (e.g. music, motion picture, book, photograph, illustration, map, article in a periodical, painting, sculpture, sound recording, etc.): _____.
3. Edition, if any (e.g., first edition, second edition, teacher's edition) or version, if any (e.g., orchestral arrangement, English translation of French text). If there is no information available relating to the edition or version of the work, the Notice should state, ''No information available'': _____.
4. Copyright renewal registration number (not required for foreign works restored under 17 U.S.C. 104A): _____.

Additional Content (OPTIONAL):

5. Original copyright registration number: _____.
6. Additional information concerning the work's normal commercial exploitation or availability at a reasonable price: _____.

Dated: December 21, 1998.

Marybeth Peters,
Register of Copyrights.

Approved:

James H. Billington,
The Librarian of Congress.

[FR Doc. 98–34430 Filed 12–29–98; 8:45 am]

BILLING CODE 1410–30–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket Nos. 98–43, 94–149; FCC 98–281]

Commercial Television Station Children's Programming Report and Commercial Broadcast Station Ownership Report

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective dates.

SUMMARY: These rules announce the effective date of the rules published on December 18, 1998. Those rules amended the Commission's rules governing the manner of filing of the commercial television station children's programming report (FCC Form 398) and the information to be set forth in the commercial broadcast station ownership report (FCC Form 323). The Commission concluded that commercial television station licensees would be required to file their stations' FCC Form 398s in electronic form and that persons holding attributable interests in commercial broadcast station permittees and licensees would be required to disclose their gender and race or ethnicity when filing FCC Form 323.

DATES: Sections 73.3526(e)(11)(iii) and 73.3615(a) published at 63 FR 70040 (December 18, 1998) are effective on December 31, 1998.

FOR FURTHER INFORMATION CONTACT: James J. Brown, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: On December 8, 1998 the Office of Management and Budget (''OMB'') approved the amendments to the public file rules pursuant to OMB Control No. 3060–0754, and on December 8, 1998, OMB approved the amendments to the broadcast station ownership filing rules pursuant to OMB Control No. 3060–0010.

Accordingly, the rules in Sections 73.3526(e)(11)(iii) and 73.3615(a) will be effective on December 31, 1998.

List of Subjects in 47 CFR Part 73

Television broadcasting, Radio and Television Broadcasting.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–34471 Filed 12–29–98; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. RSOR–6; Notice No. 47]

RIN 2130–AB31

Random Drug and Alcohol Testing: Determination of 1999 Minimum Testing Rate

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Notice of Determination.

SUMMARY: Under FRA's regulations on drug and alcohol testing, each year the Federal Railroad Administrator (Administrator) determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1996 and 1997, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1999 through December 31, 1999 will remain at 25 percent of covered railroad employees.

DATES: This notice is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Assurance and Compliance, Operating Practices Division (RRS–11), FRA, 1120 Vermont Avenue, N.W., Mail Stop 25, Washington, D.C. 20590, (telephone: 202–493–6313) or David H. Kasminoff, Esq., Trial Attorney (RCC–12), Office of Chief Counsel, FRA, Washington, D.C. 20590 (telephone: 202–493–6043).

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1999 Random Drug Testing Rate

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's MIS. Based on this and other program data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602 and 219.608, respectively).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two consecutive calendar years while testing at the 50 percent rate. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

The minimum random drug testing rate for any administration in DOT is 25 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1999 through December 31, 1999, since the industry random positive rate for 1997 was 0.77 percent.

Administrator's Determination of 1999 Random Alcohol Testing Rate

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two consecutive calendar years while testing at the 25 percent rate. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1996 MIS report indicated an industry-wide positive rate of 0.24 percent and the 1997 MIS report indicated a positive rate of 0.23 percent, FRA audits of railroad programs for the past two years revealed problems with random testing programs, particularly with the predictability of testing for alcohol which has caused FRA to question the credibility of the data. Deficiencies uncovered in these audits indicated almost no alcohol testing at the beginning of the duty day and failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never

testing at night or on weekends), thus making the timing of random alcohol testing too predictable. FRA has alerted railroads to the need to conduct random alcohol tests at all times to achieve deterrence and more accurately capture the prevalence of alcohol abuse throughout the duty period.

Because of these systemic program deficiencies, FRA will not lower the minimum random alcohol testing rate further at this time. Instead, FRA will continue to audit industry testing programs and assist railroads in achieving compliance and producing credible prevalence data. When FRA has confidence that rail industry data is derived from programs fully in compliance with random testing requirements, FRA will reevaluate whether to lower the minimum random alcohol testing rate to 10 percent.

Issued in Washington, D.C. on December 22, 1998.

Donald M. Itzkoff,

Deputy Federal Railroad Administrator.

[FR Doc. 98–34390 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA–98–4898, Notice No. 1]

[RIN 2130–AB30]

Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule establishes at $6,600 the monetary threshold for reporting railroad accidents/incidents involving railroad property damage that occur during calendar year 1999. There is no change from the reporting threshold for calendar year 1998. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with any increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts. The reporting threshold was last reviewed and changed in 1997.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 25, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–493–6280); or Nancy L. Friedman, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–493–6034).

SUPPLEMENTARY INFORMATION:

Background

Rail equipment accidents/incidents are collisions, derailments, explosions, fires, acts of God, and other events (including grade crossing accidents) involving the operation of standing or moving on-track equipment that result in damages higher than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. 49 CFR 225.19(b),(c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). *Id.*

As revised in 1997, paragraphs (c) and (e) of 49 CFR 225.19, provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted, if necessary, every year in accordance with the procedures outlined in appendix B to part 225, to reflect any cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

New Reporting Threshold

One year has passed since the accident/incident reporting threshold was last reviewed and revised. 62 FR 63675 (Dec. 2, 1997). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and decreased costs for material. FRA has determined that the current reporting threshold of $6,600, which applies to rail equipment accidents/incidents that occur during calendar year 1998, should remain the same for calendar year 1999, effective January 1, 1999.

Accordingly, §§ 225.5 and 225.19, and Appendix B have been amended to state the reporting threshold for calendar year 1999 and the most recent cost figures and the calculations made to determine that threshold. Finally, the alcohol and drug regulations (49 CFR part 219) are also amended to reflect that the reporting threshold for calendar year 1999 is $6,600.

Notice and Comment Procedures

In this rule, FRA merely recalculates the monetary reporting threshold based on the formula adopted, after notice and comment, in the final rule published June 18, 1996, 61 FR 30959, 30969, and discussed in detail in the final rule published November 29, 1996, 61 FR 30632. FRA further finds that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA further finds that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA concludes that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered ''nonsignificant'' under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will have no new significant direct or indirect economic impact on small units of government, business, or other organizations. To the extent that this rule has any impact on small units, the impact will be neutral because the rule is maintaining, rather increasing, their reporting burden.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This final rule will not have any identifiable environmental impact.

Federalism Implications

This final rule will not have a substantial 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

The Final Rule

In consideration of the foregoing, FRA amends Parts 219 and 225, Title 49, Code of Federal Regulations as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; and 49 CFR 1.49(m).

2. By amending § 219.5 by revising the first sentence in the definition of Impact accident and by revising the definitions of Reporting Threshold and Train accident to read as follows:

§ 219.5 Definitions.

* * * * *

Impact accident means a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 1999) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post.

* * *

* * * * *

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter. The reporting threshold for calendar years 1991 through 1996 is $6,300. The reporting threshold for calendar year 1997 is $6,500. The reporting threshold for calendar years 1998 through 1999 is $6,600.

* * * * *

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a ''rail equipment accident'' involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 1999), including an accident involving a switching movement.

* * * * *

3. By amending § 219.201 by revising the introductory text of paragraphs (a)(1) and (a)(2), and by revising paragraph (a)(4) to read as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) *Major train accident.* Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 1999) that involves one or more of the following:

* * * * *

(2) *Impact accident.* An impact accident (*i.e.*, a rail equipment accident defined as an ''impact accident'' in § 219.5 of this part that involves damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 1999) resulting in—

* * * * *

(4) *Passenger train accident.* Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar years 1998 through 1999) involving a passenger train.

* * * * *

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49(c), (g), and (m).

2. By amending § 225.19(c) by removing the phrase ''and $6,600 for calendar year 1998)'' and by adding in its place '', and $6,600 for calendar years 1998 through 1999)''.

3. By revising § 225.19(e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(e) The reporting threshold is $6,300 for calendar years 1991 through 1996. The reporting threshold is $6,500 for calendar year 1997 and $6,600 for calendar years 1998 through 1999. The procedure for determining the reporting threshold for calendar year 1997 and later appears as appendix B to part 225.

4. Part 225 is amended by revising paragraphs 8 and 9 of appendix B to read as follows:

Appendix B to Part 225—Procedure for Determining Reporting Threshold

* * * * *

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{1 + 0.5\,\frac{(\text{Wn} - \text{Wp})}{\text{Wp}} + 0.5\,\frac{(\text{En} - \text{Ep})}{100}\right\}$$

Where:

Prior Threshold = $6,600 (for rail equipment accidents/incidents that occur during calendar year 1998)

Wn=New average hourly wage rate ($)=18.085000

Wp=Prior average hourly wage rate ($)=17.990833

En=New equipment average PPI value ($)=134.49166

Ep=Prior equipment average PPI value ($)=135.91666

9. The result of these calculations is $6,570.2472. Since the result is rounded to the nearest $100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 1999 remains at $6,600.

Issued in Washington, D.C., on December 21, 1998.

Donald M. Itzkoff,

Deputy Administrator, Federal Railroad Administration.

[FR Doc. 98–34186 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

Global Positioning System (GPS) Technology; Extension of Application Date

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of extension of deadline for submission of applications to participate in the GPS technology pilot demonstration project.

SUMMARY: The FHWA is extending the deadline for motor carriers to submit applications to participate in the agency's Global Positioning System (GPS) technology pilot demonstration project. This project allows qualified motor carriers that use GPS technology and related safety management computer systems to enter into an agreement with the FHWA to use such systems to record and monitor drivers' hours of service, in lieu of requiring them to prepare handwritten records of duty status. This project is intended to demonstrate that the motor carrier industry can use this technology to improve compliance with the hours-of-service requirements in a manner which promotes safety and operational efficiency while reducing paperwork.

DATES: Applications must be received on or before June 30, 1999.

ADDRESSES: Written applications should be mailed to the Office of Motor Carrier Research and Standards (HCS–10), Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Application requests and specific questions regarding this pilot demonstration project may also be directed to the contact person(s) named in this notice or the Division Offices of the FHWA in your State.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1988, the FHWA published a final rule (53 FR 38666) to allow motor carriers to use certain automatic on-board devices to record their drivers' duty status in lieu of the handwritten records required by 49 CFR 395.8. This provision is now codified at 49 CFR 395.15. Many motor carriers employing this technology found that their compliance with the hours-of-service regulations improved. New technologies are emerging, however, and the narrowly crafted on-board recorder provision is becoming obsolete.

Before considering changes to the rule, the FHWA determined that it would be prudent to demonstrate the effectiveness of more recent technology for ensuring compliance with the hours-of-service regulations. On April 6, 1998, the FHWA announced a pilot project that would allow motor carriers to use GPS tracking systems and related computer programs to monitor compliance with the hours-of-service regulations. Drivers would be exempted from the requirement to maintain paper logs (63 FR 16697). Werner Enterprises, Inc., was the first carrier to enter into an agreement with the FHWA to use a GPS system for this purpose. The FHWA believes GPS technology and many of the complementary safety management computer systems currently available to the motor carrier industry provide at least the same degree of monitoring accuracy as 49 CFR 395.15. The FHWA also believes the project will demonstrate that reduced paperwork and recordkeeping requirements are consistent with highway safety, while providing economic advantages to the motor carrier industry.

Reason for Extending the Application Deadline

No applications have been received to date. However, several motor carriers have informed the FHWA of their desire to participate in this pilot project. They were unable to purchase or develop the requisite computer systems and software that complement the GPS technology before the original application deadline of October 5, 1998. Therefore, to ensure the best possible results for this pilot project, the agency is extending the application period to June 30, 1999. Any motor carriers that wish to participate in the pilot demonstration project must have GPS technology and complementary safety management computer systems which meet all of the conditions specified in the April 6, 1998, notice.

Authority: 5 U.S.C. 553(b); 23 U.S.C. 315; 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

Issued on: December 21, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–34635 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 122198B]

Atlantic Tuna Fisheries; Atlantic Bluefin Tuna

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

ACTION: Catch limit adjustment.

SUMMARY: NMFS adjusts the daily catch limit for Atlantic bluefin tuna (BFT) in all areas to one fish per vessel, which may be from the school, large school, or small medium size class.. The Angling category trophy fishery for large medium and giant BFT remains at one fish per vessel, per year. This action is being taken to lengthen the fishing season and to ensure reasonable fishing opportunities in all geographic areas without risking overharvest of the quota established for the Angling category fishery.

DATES: Effective 1 a.m. local time on January 1, 1999, until the end of the 1999 winter fishery. NMFS will announce any subsequent catch limit adjustments by publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978–281–9146.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Implementing regulations for the Atlantic tuna fisheries at § 285.24 allow for adjustments to the daily catch limit in order to provide for maximum utilization of the quota spread over the longest possible period of time. The Assistant Administrator for Fisheries, NOAA, may increase or reduce the per angler catch limit for any size class BFT or may change the per angler limit to a per vessel limit or a per vessel limit to a per angler limit. NMFS is responsible for implementing the recommendation by the International Commission for the Conservation of Atlantic Tunas to restrict domestic landings of BFT within the assigned country allocation and further to limit the take of school size BFT (measuring 27 to <47 inches/69 to <119 cm). In addition, it is NMFS' goal to increase the geographical and temporal distribution of data collection and fishing opportunities in the Angling category.

Effective January 1, 1999, NMFS adjusts the daily catch limit as follows: Each Angling category vessel may retain no more than one BFT from the school (measuring 27 to <47 inches/69 to <119 cm), large school (measuring 47 to <59 inches/119 to <150 cm), or small medium (measuring 59 to <73 inches/150 to <185 cm) size class In addition, each Angling category vessel may retain no more than one large medium or giant BFT (measuring 73 inches/185 cm or greater) per year. Catch rates during the first few months of 1998 were low, but catch rates and average sizes of BFT landed during the winter fishery were high in 1996 and 1997. This action is being taken to provide the greatest geographic and temporal range of data collection and fishing opportunities without risking overharvest.

Charter/Headboat category vessels, when engaged in recreational fishing for BFT, are subject to the same rules as Angling category vessels. In addition, anglers aboard permitted vessels may continue to tag and release BFT of all sizes under the NMFS tag-and-release program (50 CFR 285.27).

NMFS will continue to monitor the Angling category fishery closely through

the Automated Catch Reporting System and the Large Pelagic Survey. All BFT landed under the Angling category quota outside North Carolina must be reported within 24 hours of landing to the NMFS Automated Catch Reporting System by phoning 888–USA-TUNA (888–872–8862). In North Carolina, all BFT must be taken to a reporting station to receive a landing tag before removing the fish from the vessel. For information about the North Carolina Harvest Tagging Program, including reporting station locations, call 800–338–7804.

Subsequent adjustments to the daily catch limit, as necessary, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 1–888–USA-TUNA (888–872–8862) or at 978–281–9305 for updates on quota monitoring and catch limit adjustments.

Classification

This action is taken under 50 CFR 285.24(d)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: December 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries. National Marine Fisheries Service.

[FR Doc. 98–34543 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980804203–8306–02; I.D. 061298A]

RIN 0648–AL00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Special Management Zones

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

ACTION: Final rule.

SUMMARY: In accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS establishes 10 special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off South Carolina in which fishing will be restricted to handline, rod and reel, and spearfishing gear (excluding powerheads) and prohibits the use of powerheads in the Ft. Pierce Offshore Reef (Offshore Reef) SMZ. The intended effect is to promote orderly use of the fishery resources on and around the ARs, to reduce potential user-group conflicts, and to maintain the socioeconomic benefits of the ARs to the maximum extent practicable.

DATES: This rule is effective January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for snapper-grouper species in the EEZ off the southern Atlantic states are regulated under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Council recommended, and NMFS published, a proposed rule (63 FR 43656, August 14, 1998) to establish 10 SMZs in the EEZ off South Carolina in which fishing would be restricted to handline, rod and reel, and spearfishing gear (excluding powerheads) and to prohibit the use of powerheads in the Offshore Reef SMZ. The preamble to the proposed rule described the FMP's framework procedure through which the Council recommended the establishment of the SMZs and the prohibition of powerheading in the Offshore Reef SMZ and explained the need and rationale for them. Those descriptions are not repeated here.

Comments and Responses

Eight comments were received during the public comment period. A summary of the comments and NMFS' responses follow.

Comment 1: Two commenters supported the establishment of the 10 SMZs in the EEZ off South Carolina and the prohibition on the use of powerheads in the Ft. Pierce Offshore Reef SMZ.

Response: NMFS agrees.

Comment 2: A commenter noted that the reference to the Port Royal 45 Foot Reef should be changed to the Beaufort 45 Foot Reef and provided revised latitudes on the northern and southern boundaries for the Edisto 60 Foot Reef.

Response: NMFS concurs with the comments, and the final rule has been revised accordingly.

Comment 3: A commenter stated that SMZs are just another way to take from commercial fishermen and give to recreational anglers.

Response: The 10 SMZs in the EEZ off South Carolina are at the sites of ARs constructed by the South Carolina Department of Natural Resources and are on an expansive shelf area that has large areas devoid of any hard or live bottom. Prior to establishment of these ARs, these areas did not support any significant fisheries. Since commercial fishermen use powerheads, the prohibition on use of powerheads in certain SMZs would have more of an impact upon the commercial sector. Nonetheless, commercial fishermen can still fish in the SMZs provided they use allowable gear. In this context, as long as they use the same gear, all fishermen (commercial and recreational) have an equal opportunity to catch fish in the SMZs.

Comment 4: Three commenters opposed the ban on the use of powerheads in the Offshore Reef SMZ. They stated that powerheads were efficient, safe and would result in fewer fish being wounded and escaping only to die later. Also, they stated that commercial fishing had occurred on the Offshore Reef for many years and that the ban on powerheading would result in severe economic hardship. They contended that the ARs concentrated fish from surrounding areas; hence, there were fewer fish available in surrounding areas for commercial fishermen.

Response: NMFS agrees that powerheads are efficient and safe and may result in fewer wounded fish escaping and dying later. NMFS has no evidence to indicate that commercial fishing has occurred for many years on the Offshore Reef. Scientifically, it is unknown whether ARs concentrate fish from surrounding areas because the relative fishing pressure on the ARs versus surrounding areas is unknown. Thus, NMFS does not deny that the ban on powerheading in the Offshore Reef SMZ may somewhat adversely affect commercial divers by making their operations less efficient. Nonetheless, commercial fishermen may still fish in the Offshore Reef SMZ provided they use allowable gear, which includes traditional spearfishing gear. The regulations will result in a reduction in user-group conflict and promote orderly use of the resource. The intent of the SMZ program is to increase the number of ARs to create new fishing opportunities that would not otherwise exist. To the extent that one user group takes a disproportionate share of the resource, the incentive to build new ARs is diminished. Also, to the extent that ARs increase biological production, the resource base for exploitation will be increased. Given the potential costs

and benefits of banning the use of powerheads in the Offshore Reef SMZ it appears that the benefits outweigh the costs although data do not exist to quantify the result of this action.

Comment 5: A commenter noted that the proposed regulations would adversely affect commercial fishermen and expropriate a valuable marine resource for the exclusive use of recreational anglers. He estimated that commercial divers would lose $159,000 in revenue; his seafood company would lose over $200,000 in gross sales; and restaurants could lose over $1,000,000 dollars in sales if the ban on use of powerheads in the Offshore Reef was implemented.

Response: The ban on powerheading will not eliminate commercial fishing in the Offshore Reef SMZ, although it may reduce the efficiency of such fishing. Commercial landings can continue because commercial fishing is allowed with allowable gear (spearfishing and hook-and-line). The estimated economic losses attributed to the ban of powerheading in the Offshore Reef SMZ appear to represent landings from a much greater area than that encompassed by the Offshore Reef SMZ (several square miles). Fish may migrate from the Offshore Reef SMZ to surrounding areas where the use of powerheads is legal. The reduction in fishing mortality attributed to the ban on powerheads will leave more fish for allowable gear users (including both commercial and recreational fishermen). It is anticipated that the overall reduction in fishing mortality in the Offshore Reef SMZ and the surrounding area due the powerhead prohibition for the Offshore Reef SMZ will be barely measurable.

Comment 6: Two commenters stated that adequate public notice had not been provided for the proposed management measures.

Response: The Council's Snapper Grouper Assessment Group and Law Enforcement Committee met in February 1998, reviewed the proposed management measures, and forwarded comments to the Council for discussion at the March 1998 meeting. The Council held a public hearing on March 5, 1998, to obtain public comment prior to taking action. This hearing was announced in the **Federal Register** on February 17, 1998 (63 FR 7762). An article about the action was published in the April 1998 issue of the South Atlantic Update. In addition, the proposed rule for this action was published in the **Federal Register** on August 14, 1998 (63 FR 43656), and provided 30 days for public comment. Thus, NMFS disagrees with the claim that the public did not have adequate opportunity to comment on the proposed measures.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 22, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.35, paragraphs (e)(1)(xxx) through (e)(1)(xxxix) are added and paragraph (e)(2)(i) and the first sentence of paragraph (e)(2)(iv) are revised to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(1) * * *

(xxx) *Murrel's Inlet 60 Foot Reef* is bounded on the north by 33°17.50' N. lat.; on the south by 33°16.50' N. lat.; on the east by 78°44.67' W. long.; and on the west by 78°45.98' W. long.

(xxxi) *Georgetown 95 Foot Reef* is bounded on the north by 33°11.75' N. lat.; on the south by 33°10.75' N. lat.; on the east by 78°24.10' W. long.; and on the west by 78°25.63' W. long.

(xxxii) *New Georgetown 60 Foot Reef* is bounded on the north by 33°09.25' N. lat.; on the south by 33°07.75' N. lat.; on the east by 78°49.95' W. long.; and on the west by 78°51.45' W. long.

(xxxiii) *North Inlet 45 Foot Reef* is bounded on the north by 33°21.03' N. lat.; on the south by 33°20.03' N. lat.; on the east by 79°00.31' W. long.; and on the west by 79°01.51' W. long.

(xxxiv) *CJ Davidson Reef* is bounded on the north by 33°06.48' N. lat.; on the south by 33°05.48' N. lat.; on the east by 79°00.27' W. long.; and on the west by 79°01.39' W. long.

(xxxv) *Greenville Reef* is bounded on the north by 32°57.25' N. lat.; on the south by 32°56.25' N. lat.; on the east by 78°54.25' W. long.; and on the west by 78°55.25' W. long.

(xxxvi) *Charleston 60 Foot Reef* is bounded on the north by 32°33.60' N. lat.; on the south by 32°32.60' N. lat.; on the east by 79°39.70' W. long.; and on the west by 79°40.90' W. long.

(xxxvii) *Edisto 60 Foot Reef* is bounded on the north by 32°21.75' N. lat.; on the south by 32°20.75' N. lat.; on the east by 80°04.10' W. longitude; and on the west by 80°05.70' W. long.

(xxxviii) *Edisto 40 Foot Reef* is bounded on the north by 32°25.78' N. lat.; on the south by 32°24.78' N. lat.; on the east by 80°11.24' W. long.; and on the west by 80°12.32' W. long.

(xxxix) *Beaufort 45 Foot Reef* is bounded on the north by 32°07.65' N. lat.; on the south by 32°06.65' N. lat.; on the east by 80°28.80' W. long.; and on the west by 80°29.80' W. long.

(2) * * *

(i) In the SMZs specified in paragraphs (e)(1)(i) through (e)(1)(xviii) and (e)(1)(xxii) through (e)(1)(xxxix) of this section, the use of a gillnet or a trawl is prohibited, and fishing may be conducted only with handline, rod and reel, and spearfishing gear.

* * * * *

(iv) In the SMZs specified in paragraphs (e)(1)(i) through (e)(1)(x), (e)(1)(xx), and (e)(1)(xxii) through (e)(1)(xxxix) of this section, a powerhead may not be used to take South Atlantic snapper-grouper. * * *

* * * * *

[FR Doc. 98–34450 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981222317–8317–01; I.D. 100898A]

RIN 0648–AL77

Fisheries of the Northeastern United States; Final 1999 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Quahogs

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

ACTION: Final 1999 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs.

SUMMARY: NMFS issues quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany quahog fisheries for 1999. These quotas were selected from a range defined as the optimum yield (OY) for each fishery. The intent of this action is to establish allowable harvests of Atlantic surf clams and ocean quahogs from the exclusive economic zone and establish an allowable harvest of Maine mahogany quahogs from the waters north of 43°50' N. lat. in 1999.

DATES: Effective January 1, 1999, through December 31, 1999.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations, including the Environmental Assessment and Regulatory Impact Review, are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 978-281-9280.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Assistant Administrator for Fisheries, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the OY for each fishery. It is the policy of the Council that the quotas be selected at a level that would allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council policy is to also consider economic benefits of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), established a small artisanal fishery in the waters north of 43°50' N. lat. for Maine mahogany quahogs and an initial annual quota of 100,000 Maine bushels 35,150 hectoliters (hL). As specified in Amendment 10, the Maine mahogany quahog quota is in addition to the quota specified for the ocean quahog fishery.

The fishing quotas must be in compliance with overfishing definitions for each species. The overfishing definitions are fishing mortality rates of F_{20}% (20 percent of maximum spawning potential (MSP)) for surf clams and F_{25}% (25 percent of MSP) for ocean quahogs and Maine mahogany quahogs combined.

This action establishes (1) an Atlantic surf clam quota of 2.565 million bushels (1.362 million hL); (2) an ocean quahog quota of 4.500 million bushels (2.387 million hL); and (3) a Maine mahogany quahog quota of 100,000 Maine bushels (35,150 hL). The 1999 surf clam and Maine mahogany quahog quotas are identical to the 1998 quota; the 1999 ocean quahog quota represents a 13–percent increase from the 1998 level, which represents an additional 0.500 million bushels. Background about the specification of these quotas was discussed in the proposed rule, published in the **Federal Register** (November 13, 1998, 63 FR 63434), and is not repeated here. The comment period for the proposed rule ended December 7, 1998. No comments were received, and the proposed quotas are unchanged in this final rule.

FINAL 1999 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	1999 final quotas (bu)	1999 final quotas (hL)
[1]Surf clam	2,565,000	1,362,000
[1]Ocean quahog	4,500,000	2,387,000

FINAL 1999 SURF CLAM/OCEAN QUAHOG QUOTAS—Continued

Fishery	1999 final quotas (bu)	1999 final quotas (hL)
[2]Maine mahogany quahog	100,000	35,150

[1] 1 bushel = 53.24 liters
[2] 1 bushel = 35.4 liters

Classification

This action is authorized by 50 CFR part 648, complies with the National Environmental Policy Act, and has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that these fishing quotas would not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. Details concerning this certification were provided in the proposed rule and are not repeated here since there were no comments received on the certification.

Because this rule only establishes year-long quotas to be used for the sole purpose of closing the fishery when the quotas are reached and does not establish any requirements for which a regulated entity must come into compliance, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(3), finds for good cause that a delay in the effective date is unnecessary.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–34510 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 250
Wednesday, December 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1407

RIN 0560–AF47

Debarment and Suspension

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: Commodity Credit Corporation (CCC) proposes to revise the regulations setting forth its policies with regard to the debarment and suspension of individuals or firms from participation in Federal procurement and nonprocurement activities. The U.S. Department of Agriculture (USDA) has published USDA-wide nonprocurement debarment and suspension regulations, and CCC proposes to proceed under such regulations in nonprocurement debarment and suspension actions. CCC will continue to proceed under this part in procurement debarment and suspension actions but will apply the provisions of the USDA procurement debarment and suspension regulations, with the exception of the specified debarring and suspending official, in such procurement actions.

DATES: Comments must be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this proposed rule may be directed to Dean Jensen, Chief, Contract Management Branch, Room 5755–S, STOP 0551, 1400 Independence Avenue, SW, Washington, DC 20250–0551, telephone (202) 720–2115, fax (202) 690–1809. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dean Jensen, 202–720–2115.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule would have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which otherwise impede their full implementation. The final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act.

The Executive Vice President, CCC, has certified that this rule will not have a significant economic impact on a substantial number of small entities. The principal regulatory change made by the proposed rule would be to provide that CCC will proceed under the USDA-wide regulations when taking action to debar or suspend participants or potential participants in CCC's nonprocurement activities. These USDA-wide regulations are similar to the government-wide common rule and would not impact on small businesses as a group, but only upon specific entities when necessary to protect the interests of CCC. A copy of this proposed rule has been submitted to the General Counsel, Small Business Administration.

Paperwork Reduction Act

These regulations do not contain information collections that require clearance by OMB under the provisions of 44 U.S.C. chapter 35.

Discussion of Proposed Rule

This proposed rule would revise existing CCC regulations to specify policies that CCC will follow in taking action to debar or suspend individuals or firms from participation in federal procurement and nonprocurement activities. Currently the CCC debarment and suspension regulations at 7 CFR part 1407 provide that 48 CFR part 409, subpart 409.4 (§§ 409.403 *et seq.*) shall be applicable to *all* CCC debarment and suspension proceedings, except that the authority to debar and suspend shall be reserved to the Executive Vice President, CCC, or his designee. The regulations at 7 CFR part 409, subpart 409.4, are the procurement debarment and suspension regulations for USDA.

USDA has published USDA-wide nonprocurement debarment and suspension regulations at 7 CFR part 3017. Effective February 5, 1996, these regulations were amended to remove certain requirements that would have had a detrimental effect if they had been applied to certain CCC programs. Consequently, CCC is now proposing that, as a matter of policy, CCC will proceed under 7 CFR part 3017 when taking action to debar or suspend individuals or firms that are participants or potential participants in CCC's nonprocurement activities. CCC will continue to proceed under 7 CFR part 1407 when taking action to debar or suspend individuals or firms that are contractors with CCC or participants or potential participants in CCC's procurement activities. As a matter of policy, CCC will continue to apply the provisions of 48 CFR part 409, subpart 409.4, with the exception of the specified debarring and suspending official, in such procurement actions. This will foster uniformity and consistency with regard to USDA and CCC debarment and suspension procedures.

Under the current regulations at 7 CFR part 1407, the debarring and suspending official is the Executive Vice President of CCC, who is also the Administrator of the Farm Service Agency (FSA), or a designee. The Executive Vice President, CCC, or a designee, would continue to be the debarring and suspending official for CCC procurement debarment and suspension actions.

The USDA-wide nonprocurement suspension and debarment regulations at 7 CFR part 3017 provide that the debarring and suspending official will be the head of the agency initiating the action and that this authority cannot be delegated to a designee. As a matter of policy, CCC has decided that, for

nonprocurement debarment and suspension actions initiated by an agency on behalf of CCC under 7 CFR part 3017, the agency head will be the debarring and suspending official. Delegations to a designee would not be authorized.

List of Subjects in 7 CFR Part 1407

Administrative practice and procedure, Government procurement, Grant programs.

Accordingly, it is proposed that 7 CFR Part 1407 be revised to read as follows:

1. Part 1407 is revised to read as follows:

PART 1407—DEBARMENT AND SUSPENSION

Sec.
1407.1 Purpose.
1407.2 Nonprocurement debarment and suspension.
1407.3 Procurement debarment and suspension.

Authority: 15 U.S.C. 714b.

§ 1407.1 Purpose.

This part specifies the policies that the Commodity Credit Corporation (CCC) will follow in taking action to debar or suspend individuals or firms from participation in federal nonprocurement and procurement activities.

§ 1407.2 Nonprocurement debarment and suspension.

(a) CCC will proceed under 7 CFR part 3017 when taking action to debar or suspend participants or potential participants in CCC's nonprocurement activities.

(b) The debarring and suspending official for nonprocurement actions taken by CCC shall be as follows:

(1) For actions initiated by the Farm Service Agency (FSA) on behalf of CCC: the Executive Vice President of CCC, who is also the Administrator of FSA.

(2) For actions initiated by the Foreign Agricultural Service (FAS) on behalf of CCC: the Vice President of CCC who is the Administrator of FAS.

(3) For actions initiated by the Food and Nutrition Service (FNS) on behalf of CCC: the Vice President of CCC who is the Administrator of FNS.

(4) For actions initiated by the Agricultural Marketing Service (AMS) on behalf of CCC: the Vice President of CCC who is the Administrator of AMS.

(5) For actions initiated by the Natural Resources Conservation Service (NRCS) on behalf of CCC: the Vice President of CCC who is the Chief of NRCS.

§ 1407.3 Procurement debarment and suspension.

CCC will proceed under this part when taking action to debar or suspend contractors with CCC or participants or potential participants in CCC's procurement activities. CCC will apply the provisions of 48 CFR part 409, subpart 409.4, in such actions, with the exception that the debarring and suspending official will be the Executive Vice President of CCC, or a designee.

Signed at Washington, D.C., on December 22, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–34521 Filed 12–29–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–73–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. ModelsPC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require removing the ''Alternate Flap System'' from the airplane flight controls and inserting a temporary revision that specifies this change in SECTION 2—LIMITATIONS of the PC–12 Pilot's Operating Handbook. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to preclude improper use of the ''Alternate Flap System'', which could result in flap asymmetry with consequent reduced or loss of control of the airplane.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–73–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 62 33; facsimile: +41 41 610 33 51. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys,Aerospace Engineer, FAA, Small Airplane Directorate,1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No.98–CE–73–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–73–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA of Switzerland reports pilots using the ''Alternate Flap System'' without adhering to the prescribed procedures in SECTION 2—LIMITATIONS of the PC–12 Pilot's Operating Handbook.

Improper use of the ''Alternate Flap System'' in the instance of a mechanical failure of the flap system may lead to flap asymmetry with consequent reduced or loss of control of the airplane.

Relevant Service Information

Pilatus has issued Service Bulletin No. 27–004, dated September 15, 1998, which specifies procedures for removing the ''Alternate Flap System'' from the airplane flight controls. This service bulletin also specifies inserting Pilatus Report No. 01973–001, Temporary Revision, in SECTION 2—LIMITATIONS of the PC–12 Pilot's Operating Handbook.

The FOCA of Switzerland classified this service information as mandatory and issued Swiss AD HB 98–352, dated September 28, 1998, in order to assure the continued airworthiness of these airplanes in Switzerland.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the FOCA of Switzerland has kept the FAA informed of the situation described above.

The FAA has examined the findings of the FOCA of Switzerland; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is proposingAD action. The proposed AD would require removing the ''Alternate Flap System'' from the airplane flight controls and inserting Pilatus Report No. 01973–001,Temporary Revision, in SECTION 2—LIMITATIONS of the PC–12 Pilot's Operating Handbook. Accomplishment of the proposed ''Alternate Flap System'' removal would be required in accordance with Pilatus Service Bulletin No. 27–004, dated September 15, 1998.

Cost Impact

The FAA estimates that 90 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Pilatus will provide parts to the owners/operators of the affected airplanes at no charge. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $540,000, or $600 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 98–CE–73–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 227 and MSN 232; certificated in any category.

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

Compliance: Required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent improper use of the ''Alternate Flap System'', which could result in flap asymmetry with consequent reduced or loss of control of the airplane, accomplish the following:

(a) Remove the ''Alternate Flap System'' from the airplane flight controls, in accordance with the Accomplishment Instructions section of Pilatus Service Bulletin No. 27–004, dated September 15, 1998.

(b) Insert Pilatus Report No. 01973–001, Temporary Revision, into SECTION 2—LIMITATIONS of the PC–12 Pilot's Operating Handbook.

(c) Inserting the information specified in paragraph (b) of this AD into the PC–12 Pilot's Operating Handbook may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with paragraph (b) of this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a

location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(f) Questions or technical information related to Pilatus Service Bulletin No. 27–004, dated September 15, 1998; and Pilatus Report No. 01973–001, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 62 33; facsimile: +41 41 610 33 51. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Swiss AD HB 98–352, dated September 28, 1998.

Issued in Kansas City, Missouri, on December 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34580 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–97–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed AD would require inspecting the upper and lower engine nacelle inner panels for any loose or partially detached inner film, and removing any loose or partially detached inner film. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent the accumulation of loose particles on the engine inlet screen caused by film delamination, which could result in reduced engine power and possible loss of airplane control.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–97–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–97–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–97–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on all I.A.M. Model Piaggio P–180 airplanes. The R.A.I. reports an incident where the inner film of the engine nacelle panel partially detached.

This condition, if not corrected in a timely manner, could result in loose particles accumulating on the engine inlet screen with the possibility of reduced engine power and loss of airplane control.

Relevant Service Information

I.A.M. has issued Piaggio Service Bulletin (Mandatory) No.: SB–80–0101, Original Issue: May 6, 1998, which specifies procedures for:

—inspecting the upper and lower engine nacelle inner panels for any loose or partially detached inner film; and

—removing any loose or partially detached inner film.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 98–208, dated June 9, 1998, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other I.A.M. Model Piaggio P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the upper and lower engine nacelle inner panels for any loose or partially detached inner film, and removing any loose or partially detached inner film. Accomplishment of the proposed inspection and possible removal would be required in accordance with Piaggio Service Bulletin (Mandatory) No.: SB–80–0101, Original Issue: May 6, 1998.

Compliance Time of the Proposed AD

Although the reduced engine power that would result if loose film particles accumulated on the engine inlet screen would only be unsafe during flight, this condition is not a result of the number of times the airplane is operated. The loose film occurs over time because of weather and climate conditions. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all airplanes in a reasonable time period.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per airplane to accomplish the proposed inspection and film removal, and that the average labor rate is approximately $60 an hour. There are no parts required to accomplish the proposed AD. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,100, or $420 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche: Docket No. 98–CE–97–AD.

Applicability: Model Piaggio P–180 airplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the accumulation of loose particles on the engine inlet screen caused by film delamination, which could result in reduced engine power and possible loss of airplane control, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, inspect the upper and lower engine nacelle inner panels for any loose or partially detached inner film, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Piaggio Service Bulletin (Mandatory) No.: SB–80–0101, Original Issue: May 6, 1998. Prior to further flight after the inspection, remove any loose or partially detached inner film in accordance with the service bulletin.

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

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) Questions or technical information related to Piaggio Service Bulletin (Mandatory) No.: SB–80–0101, Original Issue: May 6, 1998, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 98–208, dated June 9, 1998.

Issued in Kansas City, Missouri, on December 22, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–34581 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for Child-Resistant Packaging; Household Products Containing Methacrylic Acid

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing a rule to require child-resistant (''CR'') packaging for liquid household products containing more than 5 percent or more methacrylic acid (weight-to-volume) in a single package. The Commission has preliminarily determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious

illness resulting from handling or ingesting a toxic amount of methacrylic acid. The Commission is specifically concerned about nail care products containing methacrylic acid, the only household product the Commission has confirmed to contain methacrylic acid. The Commission takes this action under the authority of the Poison Prevention Packaging Act of 1970.

DATES: Comments on the proposal should be submitted no later than March 15, 1999.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814–4408, telephone (301) 504–0800. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Susan Aitken, Ph.D., Division of Health Sciences, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0477 ext. 1195.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the ''special packaging'' of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant'' (''CR'') packaging, is (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics that are ''customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household.'' 15 U.S.C. 1471(2). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Methacrylic Acid

Methacrylic acid (''MAA'') is used as a primer for cleaning, degreasing, dehydrating and etching fingernails before applying artificial nails. Nail products containing MAA are cosmetics under the Food Drug and Cosmetic Act (''FDCA''). According to the FDCA, ''cosmetic'' includes ''articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering appearance.'' 15 U.S.C. 321(i). MAA is also used as a chemical intermediate in making resins, paints, adhesives, paper, polishes, plasticizers and dental fillings. However, the Commission does not believe that these products would be affected by the proposed rule because, in the process of manufacturing these products, the bulk of MAA becomes polymerized and is no longer in the form of the monomer MAA.

Nail primers are used to help acrylic overlays adhere to the nail surface. Not all nail primers contain MAA. Primers that do contain MAA may have as much as 100 percent MAA, but some may have other ingredients. Of the primers examined by the staff, those that do contain MAA have at least 50 percent MAA. Most of the nail primers that contain MAA are labeled ''For Professional Use Only.'' They are generally distributed through wholesale distributors directly to nail salons and to retail beauty supply stores. Some of these retail stores sell to both professionals and consumers. To obtain samples, CPSC staff visited several beauty supply retail stores, and purchased four nail primers containing MAA. They were packaged in small bottles containing ¼ oz. to ½ oz. of primer. All were sold individually packaged, none were CR and all were labeled ''Professional Use Only'' or ''For Professional Use Only.'' The staff obtained an additional primer that was confirmed to contain MAA by mail order purchase. It came in a non-CR bottle labeled ''For Professional Use Only.''

According to industry sources, there may be as many as 50 nail primer suppliers. Approximately 90 percent of nail primers marketed to professionals contain MAA. The Commission is aware of 13 companies that market or have marketed MAA-containing nail primers.

Based on industry estimates, the CPSC staff estimates annual unit sales of MAA-containing nail primers at about 1.0 to 1.3 million units in ¼ oz., ½ oz. and larger sizes. The annual retail value of these units amounts to $4–6.5 million. The wholesale value of these products is about $2.9 to $4.6 million based on a 40 percent mark-up typical of the industry.

Spokespersons for the industry could not estimate the number of consumers using MAA-containing primers at home. It is clear, however, from the incident data discussed below that these products are used in the household, and children are obtaining access to them. The ability of CPSC staff to purchase these primers at retail stores and by mail also shows that these products are readily available for consumers to purchase and bring home.

B. Toxicity of Methacrylic Acid

MAA is readily absorbed through mucous membranes of the lungs and gastrointestinal (''GI'') tract as well as through the skin. It is rapidly distributed to all major tissues, with the highest concentrations in the liver and kidneys. It is a corrosive, meaning that, when it comes into contact with living tissue, it causes destruction of tissue by chemical action. 15 U.S.C. 1261(i).

MAA's effects are similar to those of other acids. Dermal burns can destroy the surface of the epithelium and submucosa with damage to blood vessels and connective tissue. Inhaling acid vapors may produce nasal irritation, salivation, conjunctival irritation, difficulty breathing, pleuritic chest pain, and bronchospasm. Ingestion generally produces mild to severe oral and esophageal burns and GI bleeding, perforation, edema, necrosis, stenosis (narrowing of the GI passage) and fistulas (abnormal passages or outpocketings). Other intestinal injuries may also occur. Areas of stricture may develop about 3 weeks after ingestion. Eye exposure may cause pain, swelling, corneal erosions, and blindness.

C. Incident Data

The staff reviewed several sources for information of adverse health effects

from nail products containing MAA. These sources are published reports in the medical literature, the American Association of Poison Control Centers (''AAPCC''), the FDA Cosmetic Voluntary Registration Program (''CVRP''), and reports from the injury surveillance databases maintained by the Commission.

1. Medical Literature

A recent article in the medical literature analyzed data from the Toxic Exposure Surveillance System (''TESS'') for 1993 through 1995. The American Association of Poison Control Centers (''AAPCC'') collects reports of exposures to toxic chemicals (drugs, household products, poisonous plants, etc.) made to participating poison control centers within the United States in the TESS data base. The TESS data base contains 759 reports of exposures to MAA-containing nail products. Most of the exposures to children less than 6-years-old occurred in the home and involved either ingestion or both dermal contact and ingestion. Children less than 6-years-old accounted for 564 exposures. Two-year-old children were most at risk (approximately 330 exposures). Approximately 10 percent of young children suffered moderate to major injuries.[1]

A second recent article reviewed the hazard of nail care products, among them nail primers containing MAA, and reported the medical consequences of ingestion of and/or dermal exposure to primers in two children less than 5-years-old and one adult. In the first case, a 21-month-old male accidentally ingested approximately 3–5 ml of a product containing at least 98 percent MAA. The child began drooling, gagging, and vomiting. Physicians at the emergency room (''ER'') of a local hospital observed that the child was in great distress on arrival 30 minutes after ingestion. He required endotracheal intubation to maintain the airway and upper GI endoscopy. The upper GI tract, pharynx, and airways showed severe tissue damage. He developed bilateral pneumonia and respiratory distress with stridor (a harsh, high-pitched respiratory sound often associated with acute laryngeal obstruction). He required positive pressure ventilation for 6 days and parenteral nutrition for 15 days. A regular diet was resumed only after he was discharged from the hospital 28 days after he was admitted. Although x-rays of the esophagus and stomach appeared normal one month after discharge, the child experienced intermittent episodes of choking and vomiting. One year later, x-rays confirmed a stricture of the esophagus. Skin burns on the lips, chin, and neck resolved without permanent scarring.

A 2½-year-old male spilled approximately 5–7 ml of a product containing at least 98.5 percent MAA onto his face, right arm, and chest. He immediately began screaming. The affected areas were immediately rinsed with water, and he was treated at a nearby hospital 20 minutes later. ER personnel noted patchy erythema of the face, chest, right arm, and flank. Blisters developed on his chest. Treatment included rinsing his body and applying silver sulfadiene and aloe to burn areas. All burn areas healed without scarring.

A 27-year-old female ingested two artificial nail products. The first contained MAA and methylethyl ketone. The second product contained ethyl methacrylate (an ester of MAA), proprietary modifiers, and polymerization accelerators. The woman arrived at the ER 30 minutes after ingestion with symptoms of lethargy and cyanosis (a bluish color of the skin). She also exhibited lesions of the pharynx, mucosal injury in the mouth and pharynx, and ulcerated areas in the upper esophagus. Areas of persistent ulceration in the esophagus were still present after 7 days. She was able to eat a normal diet only after 14 days of hospitalization. These corrosive injuries were due to the MAA as none of the other ingredients in these products were known to be corrosives.

2. CPSC Databases

CPSC has several databases for poison incidents—the National Electronic Injury Surveillance System (''NEISS'') (January 1988—September 30, 1998), the Injury and Potential Injury Incident (''IPII'') data base (January 1980—September 30, 1998), the In-Depth Investigations (''INDP'') data base (January 1980—September 30, 1998), and the Children and Poisonings (''CAP'') data base (1978–1987). The staff reviewed these databases for incidents involving nail primers.

Between 1988 and September 30, 1998, the staff identified 85 cases as exposures to nail products specifically identified as primers or as containing MAA. It is possible that other incidents may have implicated primers and that some of the primers involved in these incidents did not contain MAA.

NEISS is a stratified probability sample of ER hospitals in the United States and its territories. The staff computed both the national estimates and sampling errors for ER visits by children less than 5 years old due to exposures to nail primers. Approximately 2,723 estimated ER visits due to exposures to nail primers occurred between January 1988 and September 1998. The lower and upper 95 percent confidence limits of this estimate were 1,756 and 3,690 respectively. Hospitalization was necessary in approximately 10 percent of estimated ER visits (262). The home was the location of exposure in 83 percent of the estimated ER visits (2,272). Primers accounted for 11 of the total 15 hospitalizations associated with nail products.

The INDP files provide additional details on some of these incidents. In one incident, a 2-year-old female spilled a bottle of nail primer containing MAA when she climbed a chair to reach the container placed on a table. On opening the bottle, the child spilled about 1½ to 2 ounces on her thigh. After trying to rub it off with her hand she then rubbed her face. The child was quickly rinsed off in a shower and taken to the ER. She was treated and released. The child suffered first and second degree burns to her right thigh and both sides of her face from her eyebrows to the bottom of her cheeks.

A 2-year-old male gained access to an artificial nail kit left on a living room table. The child was about to ingest the bonding agent (primer), possibly MAA, when he spilled about one and one-half ounces on his shirt and around his mouth and nose. He began screaming, turned pale, appeared lethargic, and his eyes were described as glassy. He was immediately taken to the ER where his burns were treated. He remained in the hospital under observation for two nights, was transferred to another hospital for an endoscopy because of difficulty swallowing, and was released after a total of four nights in the hospital.

A 12-month-old male experienced chemical burns to his hands and mouth from a fingernail primer. The child removed the cap of the primer bottle, and about one ounce of the primer spilled on his hand. The child then rubbed his mouth with his hand and began drooling and frothing. He was immediately taken to the hospital. His chemical burns were treated, and he was released the same day.

[1] ''Minor symptoms'' means that the patient exhibited some minimal signs or symptoms that resolved rapidly. ''Moderate symptoms'' means the patient exhibited signs or symptoms that were more pronounced, prolonged, or of a systemic nature which usually required some form of treatment (symptoms were not life threatening and there was no residual disability or disfigurement). ''Major symptoms'' means the patient exhibited some symptoms that were life-threatening or resulted in disfigurement or residual disability.

3. AAPCC Data

The staff obtained AAPCC data isolating nail products containing MAA for the years 1996 and 1997. The data include 467 exposures, including 341 poisonings (ingestion, ingestion/dermal), 11 ocular exposures, and 115 dermal exposures to children less than 5-years-old. No deaths were reported. One poisoning with major medical consequences was reported in 1997. This incident is discussed below. There were 32 poisoning outcomes coded as moderate (10.7 percent) and 137 poisonings (39.3 percent) coded as having minor outcomes.

The AAPCC also provided additional information on some exposures reported to, and collected by individual poison control centers. All these exposures involved MAA-containing nail primers. All incidents except one occurred in the child's own residence or in someone else's residence. A summary of the more significant cases from the collection follows below.

In an incident coded as having a major medical outcome (1997), a 3-year-old female experienced burns to her lips and cheeks when she attempted to ingest a nail primer at a beauty salon. She also suffered an anaphylactic reaction, presumably to the MAA in the primer. She remained in a pediatric intensive care unit (ICU) for 2 days. On the third day, she was transferred to a regular bed and her open cheek blisters had healed sufficiently to allow treatment with antibiotic ointment. An endoscopy on day 4 revealed no GI burns, and she was discharged on day 5.

A 1½-year-old female experienced burns over half her chest after spilling a bottle of primer on herself. The child required outpatient treatment at a burn center for the next 3 weeks and remained in pain for much of that period. According to the parents, her physician at the Center was considering skin grafts. The burns required approximately 4 weeks to heal.

A 20-month-old female spilled some primer in the process of attempting to ingest it. Blisters formed on the skin and most of the face within 30 minutes and the child was in evident pain. The pain persisted several days, and the burns did not begin to resolve for another week. The primary physician originally recommended consultation with a plastic surgeon; however, the burns eventually healed without scarring.

4. FDA Database

The FDA's CVRP database contains four reports of injuries from nail primers. One of these reports indicates that a 2-year-old male was brought to the ER after a nail primer splashed in his face and caused burns to the cornea of the eye and the face (1988).

D. Level for Regulation

The Commission is proposing a rule that would require special packaging for household products containing more than 5 percent methacrylic acid.

At this time, there is no evidence establishing the lowest concentration or amount of MAA capable of causing severe personal injury or illness to young children. The severity of burns to a human from corrosive chemicals is dependent on duration of exposure, site of contact, area of contact, volume and concentration of the product, and the chemical characteristics of the product. These chemical characteristics include pH, physical nature, viscosity, titratable acidity or alkalinity, molarity, oxidation-reduction potential, and complexing affinity for bivalent ions. MAA is a weak organic acid closely resembling acetic acid; in terms of acidity, acetic acid is 1.3-fold stronger than MAA when concentration is expressed in percent units. The Commission arrived at a level for regulation based on mutually supportive evidence derived from a report of concentration-related skin injury in mice due to MAA, the calculated pH of various concentrations of MAA, and the effects of acetic acid on humans at various concentrations.

Human evidence does not associate exposures to commercial vinegar (4 to 6 percent acetic acid) with skin burns but suggests these concentrations cause mild skin irritation. The Toxicological Advisory Board (U.S. CPSC, 1982) similarly concluded that 5 percent acetic acid is a weak skin irritant. However, doubling the acetic acid concentration to 10 percent results in classification as a strong skin irritant. Doubling the acetic acid concentration yet again to 20 percent requires labeling as a poison under Section 3(b) of the FHSA, 16 CFR 1500.129.

Similarly, concentrations of 4.8 percent MAA cause no irritation (in aqueous solution) or only mild irritation (in acetone solution) to the skin of mice. Doubling that concentration to 9.6 percent in an acetone solution results in epithelial necrosis (tissue destruction) and adverse effects in the dermis of the skin. This degree of injury constitutes a second degree burn to the skin and can best be characterized as severe irritation. Doubling the MAA concentration again to 19.2 percent causes visible destruction to skin epithelium and injury throughout all layers of the skin, including the dermis and submucosal musculature. These skin injuries, if not overtly corrosive, border on corrosive, causing ''visible destruction or irreversible alterations in the tissue at the site of contact'' as defined under the FHSA, 16 CFR 1700.3(c)(3).

Increasing degrees of injury can also be predicted to the eyes with corresponding changes in MAA concentration (4.8, 9.6, and 19.2 percent). In general, acid solutions with a pH of 2.5 or above cause little damage to the eye (the lower the pH, the stronger the acid). For example, the Toxicological Advisory Board classified a solution of 3 percent acetic acid, pH 2.53, as a moderate eye irritant. A 4.8 percent solution of MAA has a pH of 2.46, and probably would also be considered a moderate eye irritant, causing reversible inflammatory changes in the eye and its surrounding mucous membranes. Doubling the MAA concentration to 9.6 percent produces a solution with a pH of 2.3. This pH has the potential to produce more serious eye injury with inflammation of the iris and opacity of the cornea. Doubling the MAA concentration yet again to 19.2 percent results in a solution of 2.15, well within the range capable of causing corrosive eye injuries.

The use of organic solvents such as acetone or ethyl acetate in MAA solutions is likely to increase the degree of injury to eyes, mucous membranes of the GI and respiratory tract, and skin. MAA is soluble in aqueous solutions only to a limited extent (10% maximum). Any concentration of MAA exceeding 9 percent would only dissolve in organic solvents such as acetone that not only cause mild irritation in their own right but exacerbate the toxic effects of MAA itself.

The actual degree of irritancy or corrosion at 1 to 20 percent concentrations would probably depend on the volume of acid in contact with tissues, the surface area and site affected, and duration of the contact. A concentration of approximately 5 percent MAA does not cause serious injury to mouse skin. It is not likely to be more than a moderate irritant to the eyes of humans, or a mild irritant to the skin of humans. It is equivalent to a 4 percent concentration of acetic acid (about the same as vinegar), that is not associated with serious personal injury or illness in young children. However, concentrations of approximately 10 percent MAA are, at the very least, severe skin irritants in a mouse model and, judging from calculated pH values, are capable of serious eye injury. The weight of the evidence indicates that solutions containing 5 percent MAA

will not cause serious personal harm or illness in young children. Because the staff is not aware of data defining the precise point between 5 and 10 percent at which injury becomes serious, the staff recommends that child-resistant packaging be required for products containing more than 5 percent MAA to protect children from potential serious injury. The Commission solicits comments on this level.

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning ingestion of MAA demonstrate that MAA can cause serious illness and injury to children. Moreover, it is available to children in the form of nail primers that are accessible in the home. These packages are not CR.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission preliminarily finds that the degree and nature of the hazard to children from handling and ingesting household products containing MAA is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of MAA-containing products and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is ''technically feasible, practicable, and appropriate.'' 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists or can be readily developed and implemented to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

The staff evaluated the packaging of ten nail primer products. Five of these nail primers contained MAA. Four of the five were packaged in 0.25 to 2 ounce brown or tinted glass bottles with 13–20 millimeter (''mm'') non-CR continuous threaded (''CT'') plastic closures. One was in a brown plastic bottle with a non-CR plastic closure. Three of the five packages included a built-in applicator brush, one had a separate applicator brush, and one completely lacked an applicator brush. One primer was packaged in a plastic marker pen with a fiber applicator tip, preventing any substantial flow or spillage of free liquid from the device. The staff is aware of a similar device used for an MAA-containing primer sold through a mail order catalog.

Packaging for MAA-containing nail primers that is senior friendly (''SF'') and CR is technically feasible. There are currently available 20 mm CT caps without built-in applicator brushes that are SF and CR. The manufacturer of this cap also manufactures a 28 mm CT closure that is CR and SF and has a built in applicator brush. This manufacturer has indicated to staff that it could develop a 20 mm CR and SF cap with a built-in applicator brush suitable for use with MAA within 6 months to a year. Manufacturers of bottles with smaller finishes (the part of a bottle that receives the cap) may have to change to bottles with 20 mm finishes. However, this should not present a problem since some of the smallest sizes of bottles used for MAA-containing primers (0.25 ounces) already have a 20 mm finish. Manufacturers of MAA-containing primers concerned with spillage have the additional option of using a variety of commercially available restrictive inserts to decrease the inside diameter of the bottle opening in conjunction with CR 20 mm finishes. One manufacturer of MAA-containing primers currently uses such a restriction.

Special packaging for MAA-containing household products is practicable. CT caps that meet the senior friendly and CR testing requirements have been in mass production for many years. A 20 mm continuous threaded closure that is CR and SF but lacks an insert for a brush is now in mass production. Similarly, a 28 mm continuous threaded closure that is CR and SF and does have an insert for a brush is in mass production. The mass production and assembly line techniques used for the 28 mm CR and SF closure with insert can be adapted to those used for the 20 mm non-CR closure with an insert and brush.

Special packaging is appropriate when it will protect the integrity of the substance and not interfere with intended storage or use. Nail primers containing MAA are currently packaged in both glass and plastic bottles. Thus, both glass and plastic containers are suitable for MAA-containing products. One packaging manufacturer uses identical materials to produce a 28 mm continuous threaded CR and SF closure (equipped with an insert for attaching a brush) and a 20 mm continuous threaded non-CR closure that is currently used for MAA-containing primers and is equipped with an insert and attached brush. Plastic bottle neck restriction devices should also be compatible with MAA since at least one is already in use. Therefore, the same materials used for non-CR packages of MAA-containing products, with or without brushes or inserts, are used or can be used for CR-packages.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and preliminarily finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

F. Exemption

The Commission is aware of one MAA-containing primer that is packaged in a tube with a fiber applicator tip. The container looks like a plastic marker pen. The fiber strand holds the MAA so that no free liquid flows through the device. An overcap covers the applicator tip. Several manufacturers market this type of device for applying nail primer. Some of these primers contain MAA.

The Commission believes that MAA-containing primers packaged in this type of device do not pose a risk of serious injury. For this type of package not to pose a risk to children, the Commission believes that two conditions must be met: (1) the absorbent material must hold the MAA so that no free liquid is in the device, and (2) through reasonably foreseeable use the MAA will be released only through the tip of the device. Reasonably foreseeable use would include reasonably foreseeable abuse by children. These conditions are grounded in an existing exemption from FHSA labeling for porous-tip ink-marking devices. 16 CFR 1500.83(a)(9).

Although it might be possible to develop a lug finish CR closure to overcap these devices, based on the design of these devices and available injury information, the Commission

does not believe that a CR cap is necessary. The volume of MAA available and accessible is extremely small (total amount of material in the devices is reportedly less than 1/2 gram). The only possible route of serious injury would be from direct contact of the felt tip with the eye. The staff has not identified any incidents involving these types of devices. Thus, the Commission proposes to exempt MAA containing primers contained in these marker-like devices if they meet the conditions discussed above.

G. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

The Commission proposes a one year effective date. Currently, 20 mm CT caps that are CR and senior friendly are available. However, these caps are not available with a built-in applicator brush. Thus, manufacturers will need to make some modifications to provide a CR cap with a built-in applicator. Such closures should be available within one year. This includes time for closure manufacturers to produce the 20 mm closures and for product manufacturers to change existing assembly lines to accommodate these closures. Some manufacturers may need to change the bottles currently in use to bottles with 20 mm finishes. A year provides time to produce commercial quantities of the 20 mm CR and SF closures, adjust assembly lines to a different bottle size, and conduct testing following the PPPA protocol.

Thus, the Commission proposes that a rule would take effect 12 months after publication of a final rule and would apply to products that are packaged on or after the effective date.

H. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for household products containing more than 5 percent methacrylic acid.

As noted above, the Commission is aware of 13 companies that market nail primers containing MAA. Seven of these may be small businesses. As discussed above, the technology exists to produce CR packaging suitable for use with MAA-containing nail primers. Requiring special packaging for these nail primers may affect many small suppliers. However, the impact on any individual supplier is expected to be small. Generally, incremental costs for CR packaging are low relative to the retail cost of the product. Moreover, these incremental costs would likely be passed on to users (professional nail technicians and consumers who purchase these nail primers). Thus, based on current information, the Commission certifies that the proposed rule is not likely to have a substantial effect on a significant number of small businesses. The Commission requests suppliers, particularly small businesses, to provide information on the impact the proposed rule would have on them.

I. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for MAA-containing products.

The Commission's regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this proposed rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

J. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the PPPA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule requiring CR packaging for household products containing more than 5 percent MAA would preempt non-identical state or local special packaging standards for such MAA containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the proposed rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Cosmetics, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by republishing the introductory text of paragraph (a) and adding new paragraph (a)(29) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) Substances. The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or

serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(29) Methacrylic acid. Except as provided in the following sentence, liquid household products containing more than 5 percent methacrylic acid (weight-to-volume) in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a),(b) and (c). Methacrylic acid products applied by an absorbent material contained inside a dispenser (such as a pen-like marker) are exempt from this requirement provided that: the methacrylic acid is contained by the absorbent material so that no free liquid is within the device; and under any reasonably foreseeable conditions of use the methacrylic acid will emerge only through the tip of the device.

* * * * *

Dated: December 21, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Susan Aitken, Ph.D., EH, to the Commission, ''Proposed Special Packaging Standard for Household Products Containing Methacrylic Acid,'' November 23, 1998.
2. Memorandum from Susan Aitken, Ph.D., EH, to Mary Ann Danello, Ph.D., Associate Executive Director, EH, ''Toxicity of Methacrylic Acid'' August 12, 1998.
3. Memorandum from Susan C. Aitken, Ph.D., EH, to Mary Ann Danello, Ph.D., EH, ''Human Injuries from Nail Products Containing Methacrylic Acid,'' August 12, 1998.
4. Memorandum from Marcia P. Robins, EC, to Susan Aitken, Ph.D., EH, ''Economic Considerations: Proposal to Require Child-Resistant Packaging for Household Products Containing Methacrylic Acid,'' August 17, 1998.
5. Memorandum from Tewabe A. Asebe, EH, to Susan Aitken, Ph.D., EH, ''Technical Feasibility, Practicability, and Appropriateness Determination for Proposed Rule to Require Special Packaging for Methacrylic Acid-Containing Products,'' August 17, 1998.
6. Memorandum from Bhooshan Bharat, Ph.D., LS, and Bhavi K. Jain, MS, LS, ''Report on the Testing of Nail Products for Titratable Acid Reserve (''TAR''), Quantification of Methacrylic Acid, and pH,'' August 20, 1998.

[FR Doc. 98–34345 Filed 12–29–98; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket Nos. RM98–10–000 and RM98–12–000]

Regulation of Short-Term Natural Gas Transportation Services; Regulation of Interstate Natural Gas Transportation Services; Order Granting Extention of Time for Filing Comments

December 23, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE

ACTION: Order granting extension of time for filing comments.

SUMMARY: On July 29, 1998, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM98–10–000 (63 FR 42982) and a Notice of Inquiry (NOI) in Docket No. RM98–12–000 (63 FR 42974) dealing with the Regulation of Short-Term Natural Gas Transportation Services. The date for filing comments in these proceedings is being extended at the request of various interested parties.

DATES:

Comments on the NOPR are extended to and including April 22, 1998.

Comments on the NOI are extended to and including February 22, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: David P. Boergers, Secretary 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0400.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Regulation of Short-Term Natural Gas Transportation Services, Docket No. RM98–10–000

Regulation of Interstate Natural Gas Transportation Services, Docket No. RM98–12–000

Order Granting Extension of Time for Filing Comments

(Issued December 23, 1998)

On December 7, 1998, the Natural Gas Council (composed of the American Gas Association, the Interstate Natural Gas Association of America, the Natural Gas Supply Association, and the Independent Petroleum Association of America) joined by the Process Gas Consumers Group, the American Iron and Steel Institute, the Georgia Industrial Group, and the Edison Electric Institute submitted a letter, filed in Docket No. RM98–10–000, requesting an extension of time until April 22, 1999, within which to file comments in response to the Commission's Notice of Proposed Rulemaking (NOPR), issued July 29, 1998, in Docket No. RM98–10–000,[1] and the Notice of Inquiry (NOI), issued July 29, 1998, in Docket No. RM98–12–000.[2] Comments on the NOPR and NOI currently are due by January 22, 1999.

The Commission will grant an extension, until April 22, 1999, for parties to file comments on the NOPR and NOI. However, the Commission would be interested in any comments that can be filed on a voluntary basis, within the current schedule addressing the relationship between the short-term issues in the NOPR and the long-term issues in the NOI. The Commission emphasizes that any comments filed in January will not be the last opportunity for parties to have input on these important matters. The Commission merely wishes to be more fully apprised of the current state of the parties' ideas.

So far, the public discussions on the proposals in the NOPR and NOI have concentrated on the issue of auctions. The other issues included in the NOPR, such as negotiated terms and conditions or certificate policy, have received little attention. Similarly, there has been little dialogue concerning rate designs for long-term contracts that would remove or lessen the current bias toward short-term contracts. The extension will provide time for the industry to focus on these important issues and to better formulate comments. The informal dialogue that has occurred to date between the Commission staff and all the segments of the industry appears to have been worthwhile. The extension also will give the Commission's staff the opportunity to continue holding conferences and using other means to continue the interaction with all segments of the industry on all of the issues raised in the NOPR and NOI. The Commission requests that by January 22, 1999, parties identify any issues, other than those related to auctions, for which it might be beneficial for the Commission staff to convene a technical conference during the pendency of the extended comment period.

The additional time has been requested to permit the groups who joined in the request to engage in further discussions regarding the issues raised in the NOPR and NOI. The results of such consensus-building efforts will be of most value to the Commission if they

[1] 63 FR 42982 (Aug. 11, 1998).

[2] 63 FR 42974 (Aug. 11, 1998).

include all of the affected interests. The groups have committed to apprising the Commission of the status of their discussions at some interim date and the Commission would find that information helpful.

The Commission orders: The date for filing comments on the Notice of Proposed Rulemaking and the Notice of Inquiry in these dockets is extended to April 22, 1999.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–34587 Filed 12–29–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–49–1–7400; FRL–6204–5]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Louisiana: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing conditional approval of a Vehicle Inspection and Maintenance (I/M) Program proposed by the State of Louisiana. This action is taken under section 110 of the Clean Air Act (the Act). This conditional approval is also being proposed under the parallel processing provision of 40 CFR part 51. The EPA is proposing a conditional approval because the SIP revision is lacking certain elements necessary to meet the statutory and regulatory requirements of an enhanced I/M program. To correct the SIP deficiencies, the State must commit by a date certain within one year of final EPA rulemaking on this SIP to: submit a demonstration supporting its claim of 100 percent network effectiveness; submit an effectiveness demonstration of sticker-based enforcement; submit an opinion from the State Attorney General regarding barriers to immediate suspension authority in the Louisiana Constitution; submit an updated interagency agreement between the Louisiana Department of Environmental Quality (LDEQ) and the Department of Public Safety (DPS); make changes to the DPS Official Motor Vehicle Inspection Manual (the Manual) to reflect: changing the weight of light-and heavy-duty vehicles covered by the program in the nonattainment area from 8,500 lb. Gross Vehicle Weight Rating (GVWR) to 10,000 lb. GVWR; adding test procedures for evaporative system checks in the nonattainment area to the Manual; adding a list of evaporative system check test equipment for the nonattainment area to the Manual; adding calibration of evaporative system check test equipment to the Manual; and adding an additional training requirement on evaporative system check equipment for inspector/technicians in the nonattainment area to the Manual. Furthermore, the State's I/M program must start up no later than January 1, 2000, to qualify for a final full approval.

If the State submits these documents and changes to the Manual to correct the deficiencies noted above by the date committed to within one year of the final conditional approval, then the I/M submittal will be fully approved into the SIP. If the conditions are not met by that date, the conditional approval converts to a disapproval. In addition, EPA has identified two sections of the Federal I/M Regulation for which the State cannot meet the requirements as written. The EPA intends to amend the sections of the Federal rule on test equipment and on-road testing to exempt programs that meet certain criteria from the portions of those sections which have been identified elsewhere in this action. The EPA cannot proceed with final action conditionally approving this SIP until it has completed final rulemaking amending the Federal I/M rule with respect to these issues.

DATES: Comments must be received on or before January 29, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Louisiana Department of Environmental Quality, Air Quality Compliance Division, 7290 Bluebonnet, 2nd Floor, Baton Rouge, Louisiana. Louisiana Department of Environmental Quality Capital Regional Office, 11720 Airline Highway, Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7367.

I. Background

A final EPA disapproval of the Louisiana 1996 I/M SIP revision was effective on February 13, 1998. Discussion of background leading up to that final disapproval can be found in the rulemakings on that SIP, 62 FR 61633 (June 9, 1997), 62 FR 41002 (July 31, 1997), and 62 FR 61633 (November 19,1997). An 18-month sanction clock was started under section 179 of the Act on the effective date of the final disapproval. In July 1998, Louisiana sought greater flexibility from EPA for designing an I/M program tailored to meet the State's air quality needs. The EPA worked in parallel with the State in developing an approvable I/M SIP revision.

The State's I/M program is required because of its nonattainment classification and population. The SIP credits are not taken for the I/M plan in the 15% Rate-of-Progress (ROP) Plan or the 9% ROP plan, or the State's attainment demonstration. Additional information on these actions can be found in EPA's proposed approval in 63 FR 44192 dated August 18, 1998. Furthermore, EPA believes that in taking action under section 110 of the Act, it is appropriate to propose granting a conditional approval to this submittal since there are deficiencies with respect to certain statutory and regulatory requirements (identified herein) that EPA believes can be supplied by the State during the following 12 months. The State must commit to address the insufficiencies identified above by a date certain within one year of EPA final action on this SIP.

II. The State's Proposal

Louisiana published a notice of a proposed I/M SIP in the *Louisiana Register* on October 20, 1998. The State received public comment through December 1, 1998. The SIP contains a SIP narrative, I/M Rules, and several appendices including the DPS Manual addressing the requirements of the I/M program. The submittal is intended to fulfill the requirements of the Act for the ozone nonattainment area of Louisiana that is required to implement an I/M program.

III. EPA's Analysis of Louisiana's Proposal

The EPA reviewed the State's proposal against the requirements contained in the Act and Federal I/M

rules (40 CFR part 51, subpart S). Deficiencies that EPA noted are the need for: (1) a demonstration supporting the State's claim of 100 percent network effectiveness; (2) an effectiveness demonstration of sticker-based enforcement; (3) an opinion from the State Attorney General regarding barriers to immediate suspension authority in the Louisiana Constitution; (4) an updated interagency agreement between LDEQ and the DPS. In addition, five changes to the DPS Manual must be made to reflect; (5) changing the weight of light- and heavy-duty vehicles covered by the program in the nonattainment area from 8,500 lb. GVWR to 10,000 lb. GVWR; (6) adding test procedures for evaporative system checks in the nonattainment area to the Manual; (7) adding a list of evaporative system check test equipment for the nonattainment area to the Manual; (8) adding calibration of evaporative system check test equipment to the Manual; and (9) adding training on evaporative system check equipment for inspector/technicians in the nonattainment area to the Manual. During EPA's public comment period, the State must formally commit to correct these deficiencies by a date certain within 12 months after the date of approval of the plan revision. The State must then correct the deficiencies within one year of final conditional approval or this approval will automatically convert to a disapproval under section 110(k)(4) the Act.

The following analysis describes the Federal requirement and addresses how the State intends to fulfill the requirements of the Act and the Federal I/M rules. This analysis assumes the State corrects the deficiencies stated above. A more detailed analysis of the State submittal is included in the Technical Support Document for this action and may be obtained from the EPA Region 6 office. A summary of EPA's findings follows.

Section 51.350 **Applicability.**

The SIP needs to describe the applicable areas in detail and, consistent with § 51.372 of the Federal I/M rule, shall include the legal authority or rules necessary to establish program boundaries.

The Louisiana regulations specify that an I/M program will be implemented in the Baton Rouge ozone nonattainment area. The low enhanced I/M program will be implemented in the urbanized area that includes East Baton Rouge Parish. In addition to East Baton Rouge Parish, the program will cover Ascension, Iberville, Livingston, and West Baton Rouge parishes in the nonattainment area. The authority to establish program boundaries in this area is found in Louisiana Revised Statutes (LA R.S.) 32:1304(3).

The State submittal meets the applicability requirement of the Federal I/M regulation for approval.

Section 51.351–2 Low Enhanced I/M Performance Standard

The I/M program submitted by the State is required to meet a performance standard, either basic or enhanced as applicable. The performance standard sets an emission reduction target that must be met by a program in order for the SIP to be approvable. The SIP must also provide that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met. Equivalency of emission levels needed to achieve the I/M program design in the SIP to those of the model program described in this section must be demonstrated using the most current version of EPA's mobile source emission model, or an alternative approved by the Administrator.

The State has submitted a modeling demonstration using the EPA computer model MOBILE5b and localized parameters showing that the low enhanced performance standard can be met for Volatile Organic Compounds (VOCs) in the Baton Rouge area with the program proposed by the State. The low enhanced performance standard is established in 40 CFR 51.351(g). That section provides that states may select the low enhanced performance standard if they have an approved SIP for reasonable further progress in 1996, commonly known as a 15% ROP Plan. Louisiana's 15% Plan for Baton Rouge was approved on October 22, 1996 (61 FR 54737). Projections of oxides of nitrogen (NOx) emissions were not included because EPA approved a NOx waiver for Baton Rouge on January 16, 1996, which was published on January 26, 1996 at 61 FR 2438. Light- and heavy-duty vehicles up to 10,000 lb. GVWR from 1980 and newer model years will be required to participate in the I/M program. No covered model years are exempted. The State is modeling with a test and repair program which assumes a 100 percent credit for network effectiveness. This amount of credit was chosen by the State to complete the modeling necessary to demonstrate compliance with the performance standard. States submitting I/M SIP revisions after passage of the National Highway System Designation Act (NHSDA) are not subject to an automatic 50 percent credit deduction for decentralized programs that had been in EPA's original I/M rules. The NHSDA effectively invalidated this regulatory provision establishing the credit reduction. However, the State must demonstrate within 12 months of final conditional approval of the SIP that the network effectiveness credit claimed is in fact being met, or adjust the credit accordingly to reflect the actual effectiveness of the test network.

The State must submit a demonstration supporting its claim of 100 percent network effectiveness in order to meet the low-enhanced I/M performance standard requirements of the Federal I/M regulations for approval. Although vehicles between 8,500 and 10,000 lb. GVWR are not required by the Federal I/M rule to be covered, the Louisiana program needs the credit generated by the additional vehicles to meet the performance standard. Accordingly, the State must submit a revision to the DPS Manual changing the maximum weight of light- and heavy-duty vehicles required to participate in the program from 8,500 lb. GVWR to 10,000 lb. GVWR.

Section 51.353 Network Type and Program Evaluation

The State submittal is required to include a description of the network to be employed, and the required legal authority. Also, for enhanced areas, the SIP needs to include a description of the evaluation schedule and protocol, the sampling methodology, the data collection and analysis system, the resources and personnel for evaluation, and related details of the evaluation program, and the legal authority enabling the evaluation program.

The State is implementing a decentralized test and repair program. The program includes an ongoing evaluation process with results reported to EPA on a biennial basis, in July, starting two years after the initial start of mandatory testing. Surveys assessing effectiveness, measured rates of tampering, and results of covert audits will be reported. In addition, the SIP commits to meet the ongoing program evaluation requirement using a sound methodology approved by EPA, and of at least 0.1 percent of subject vehicles, and reporting the results of such evaluation on a biennial basis. Resources and personnel for the program evaluation are described in the SIP. Legal authority, which is contained in LA R.S. 32:1305–1306, authorizes the DPS to implement the program and conduct the program evaluation.

The State SIP meets the network type and program evaluation requirements of the Federal I/M regulations for approval.

Section 51.354 Adequate Tools and Resources

The SIP needs to include a description of the resources that will be used for program operation and discuss how the performance standard will be met which includes (1) a detailed budget plan which describes the source of funds for personnel, program administration, program enforcement, purchase of necessary equipment (such as vehicles for undercover audits), and any other requirements discussed throughout, for the period prior to the next biennial self-evaluation required in the Federal I/M rule, and (2) a description of personnel resources. The plan shall include the number of personnel dedicated to overt and covert auditing, data analysis, program administration, enforcement, and other necessary functions and the training attendant to each function.

Louisiana R.S. 32:1306.C(2) authorizes the program to charge an emission inspection fee and a safety/antitampering inspection fee. The SIP narrative also describes the budget, staffing support, and equipment that will be added to the existing personnel and budget needed to implement the program. The State has committed to employ and train three additional employees dedicated to implementing this program.

The State submittal meets the adequate tools and resources requirements of the Federal I/M regulations for approval.

Section 51.355 Test Frequency and Convenience

The State submittal needs to describe the test schedule in detail, including the test year selection scheme if testing is other than annual. Also, the SIP needs to include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process. In addition, in enhanced I/M programs, test systems shall be designed in such a way as to provide convenient service to motorists who are required to get their vehicles tested. The SIP needs to demonstrate that the network of stations providing test services is sufficient to insure short waiting times to get a test and short driving distances to test stations.

The revised Louisiana I/M SIP commits to testing all designated vehicles of model years 1980 and newer annually. In addition, at least 0.5 percent of the vehicle population will be subject to on-road testing. The program is decentralized and stations will adhere to regular convenient inspection hours. The network of stations will consist of familiar locations where motorists regularly receive the annual currently required safety/antitampering inspections and other vehicle services. Louisiana R.S. 1301–1310 provides the legal authority for implementation of the test frequency.

The State submittal meets the test frequency and convenience requirements of the Federal I/M regulations for approval.

Section 51.356 Vehicle Coverage

The State submittal needs to include a detailed description of the number and types of vehicles to be covered by the program, and a plan for how those vehicles are to be identified, including vehicles that are routinely operated in the area but may not be registered in the area. Also, the SIP needs to include a description of any special exemptions which will be granted by the program, and an estimate of the percentage and number of subject vehicles which will be impacted. Such exemptions need to be accounted for in the emission reduction analysis. In addition, the SIP needs to include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

The revised Louisiana I/M SIP includes coverage of light- and heavy-duty cars and trucks up to 10,000 lb. GVWR registered or required to be registered in the I/M program area, including fleets. Subject vehicles will be identified through the Department of Motor Vehicle database. No covered model years are exempt. Approximately 388,000 vehicles will be subject to inspection. Legal authority for vehicle coverage is contained in LA R.S. 32:1304.A(2), and LA R.S. 47:501 and 503.

The State intends to revise to the Louisiana DPS Official Motor Vehicle Inspection Manual to increase the weight of vehicles included in their program in order to meet the performance standard. The weight of light- and heavy-duty vehicles covered by the program in the nonattainment area needs to be changed from 8,500 lb. GVWR to 10,000 lb. GVWR for the State program to meet the applicable performance standard. However, 40 CFR 51.356 only mandates coverage up to 8,500 lb. GVWR. The State submittal meets this requirement for vehicle coverage of the Federal I/M rule.

Section 51.357 Test Procedures and Standards

The SIP needs to include a description of each test procedure used. The SIP also needs to include the rule, ordinance or law describing and establishing the test procedures.

Vehicles tested in the nonattainment area program shall be subject to an antitampering check, a fill pipe pressure test, and a gas cap pressure test. Pressure testing procedures will meet requirements in EPA IM240 and Evaporative Test Guidance (1998 Revised Technical Guidance). Authority to conduct tests on vehicles is established in LA R.S. 32:1304. The State commits to implementing on-board diagnostic testing on all 1996 and newer vehicles beginning January 1, 2001.

The State must submit a revision to the Louisiana DPS Manual in order to meet the test procedures requirements of the Federal I/M regulations for approval. Test procedures for evaporative system checks in nonattainment areas must be added to the Manual.

Section 51.358 Test Equipment

The State submittal needs to include written technical specifications for all test equipment used in the program and needs to address each of the requirements contained in 40 CFR 51.358 of the Federal I/M rule. The specifications need to describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

The revised Louisiana I/M SIP states that all test equipment specifications will be consistent with that described in the EPA IM240 and Evap Technical Guidance (August 1998). In addition, the gas cap integrity test will be in accordance with EPA equipment specifications.

The State must submit a revision to the Louisiana DPS Manual in order to meet some of the test equipment requirements of the Federal I/M regulations for approval. A list of evaporative system check test equipment for the nonattainment area must be added to the Manual. Because the decentralized program does not include realtime data capture, which is currently required under section 51.358, this section of the Federal I/M regulation cannot be satisfied. However, EPA intends to amend the Federal I/M regulation to allow States, under certain circumstances, to be exempt from this requirement, provided they can demonstrate equal data capture effectiveness through other means. The EPA cannot proceed to final conditional approval of this SIP until EPA has completed this rulemaking.

Section 51.359 Quality Control

The State submittal needs to include a description of quality control and recordkeeping procedures. The SIP needs to include the procedure manual, rule, ordinance or law describing and establishing the quality control procedures and requirements.

The revised Louisiana I/M SIP states that the quality control procedures applicable to the State program design will be conducted in accordance with 40 CFR 51.359. The requirements under LA R.S. 32:1305 and 1306 ensure that equipment calibrations are properly performed and recorded while maintaining compliance document security. Equipment manufacturers' quality control procedures, periodic maintenance schedules, and calibration procedures will be performed per the SIP revision to ensure proper operation of the test equipment.

The State must submit a revision to the Louisiana DPS Manual in order to meet the quality control requirements pertaining to proper calibration of test equipment of the Federal I/M regulations for approval. Calibration procedures for evaporative system check test equipment in the nonattainment area must be added to the Manual.

Section 51.360 Waivers and Compliance Via Diagnostic Inspection

The State submittal needs to include a maximum waiver rate expressed as a percentage of initially failed vehicles. This waiver rate needs to be used for estimating emission reduction benefits in the modeling analysis. Also, the State needs to take corrective action if the waiver rate exceeds that committed to in the SIP, or revise the SIP and the emission reductions claimed accordingly. In addition, the SIP needs to describe the waiver criteria and procedures, including cost limits, quality assurance methods and measures, and administration. Lastly, the SIP needs to include the necessary legal authority, ordinance, or rules to issue waivers, set and adjust cost limits as required, and carry out any other functions necessary to administer the waiver system, including enforcement of the waiver provisions.

The State will not have a minimum waiver amount. That is, the State does not intend to allow any waivers from the program. The revised Louisiana I/M program therefore includes a waiver rate of 0 percent of initially failed vehicles. This waiver rate is used in the modeling demonstration. The State need not provide for waiver program administration or future corrective action because it does not have a waiver program at all.

The State submittal meets the waivers and compliance via diagnostic inspection requirement of the Federal I/M regulations for approval.

Section 51.361 Motorist Compliance Enforcement

The State submittal needs to provide information concerning the enforcement process, including: (1) a description of the existing compliance mechanism if it is to be used in the future and the demonstration that it is as effective or more effective than registration-denial enforcement; (2) an identification of the agencies responsible for performing each of the applicable activities in this section; (3) a description of, and accounting for, all classes of exempt vehicles; and (4) a description of the plan for testing fleet vehicles, rental car fleets, leased vehicles, and any other subject vehicles, e.g., those operated in (but not necessarily registered in) the program area. Also, the SIP needs to include a determination of the current compliance rate based on a study of the system that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. Estimates of the effect of closing such loopholes and otherwise improving the enforcement mechanism shall be supported with detailed analyses. In addition, the SIP needs to include the legal authority to implement and enforce the program. Lastly, the SIP needs to include a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The State has chosen to enforce the I/M program with sticker-based enforcement. The current safety/antitampering program relies on sticker-based enforcement. Penalties for missing stickers include a fine, as well as possible criminal charges, or revocation of the inspector from the program.

The motorist compliance enforcement program will be handled cooperatively by the DPS, local law enforcement agencies, and the LDEQ. As a condition to the approval of the I/M SIP, the State is required to submit a demonstration of sticker-based enforcement effectiveness to show this method of enforcement is more effective than registration denial, as required by the Act.

There are no classes of on-road exempt vehicles. Fleet vehicles will be allowed to conduct self-testing provided that the fleet testing stations meet the required equipment standards, are certified by the administrative authority, and tests are performed in accordance with established inspection procedures. Motorists operating vehicles in the I/M areas with an expired or invalid sticker will be subject to penalties and/or citations by local and State law enforcement officials, imprisonment, or registration suspension. The SIP commits to a compliance rate of 96 percent through cooperation with the DPS. The legal authority to implement and enforce the program is included in the Louisiana statutes cited in the SIP.

The State must submit a demonstration of sticker-based enforcement effectiveness in order to meet the motorist compliance enforcement requirements of the Act and Federal I/M regulations for approval.

Section 51.362 Motorist Compliance Enforcement Program Oversight

The SIP needs to include a description of enforcement program oversight and information management activities.

The Louisiana I/M SIP provides for regular auditing of its enforcement efforts and for following effective management practices, including adjustments to improve the program when necessary. The program oversight and information management activities listed in the SIP narrative and in the interagency agreement include schedules and procedures for I/M document handling and processing, audit procedures, and procedures for dealing with motorists and inspection facilities suspected of violating program rules.

The State submittal meets the motorist compliance enforcement program oversight requirements of the I/M regulations for approval.

Section 51.363 Quality Assurance

The SIP needs to include a description of the quality assurance program, and written procedures manuals covering both overt and covert performance audits, record audits, and equipment audits. This requirement does not include materials or discussion of details of enforcement strategies that would ultimately hamper the enforcement process.

The revised Louisiana I/M SIP includes a detailed description of its quality assurance program. The program includes both covert and overt audits which will be conducted on a regular basis. The SIP describes regular performance audits which include the inspection of records and equipment. Procedures for program oversight are based upon written instructions and will be updated as necessary.

The State submittal meets the quality assurance requirement of the Federal I/M regulations for approval.

Section 51.364 Enforcement Against Contractors, Stations and Inspectors

The SIP needs to include the penalty schedule and the legal authority for establishing and imposing penalties, civil fines, license suspension, and revocations. In the case of State constitutional impediments to immediate suspension authority, the State Attorney General needs to furnish an official opinion for the SIP explaining the constitutional impediment, as well as relevant case law. Also, the SIP needs to describe the administrative and judicial procedures and responsibilities relevant to the enforcement process, including which agencies, courts, and jurisdictions are involved; who will prosecute and adjudicate cases; and other aspects of the enforcement of the program requirements, the resources to be allocated to this function, and the source of those funds. In States without immediate suspension authority, the SIP needs to demonstrate that sufficient resources, personnel, and systems are in place to meet the three day case management requirement for violations that directly affect emission reductions.

The revised Louisiana I/M SIP states that the State may assess penalties in its enforcement against stations and inspectors. The penalty schedule is discussed in the SIP narrative. The SIP describes the enforcement process. The legal authority for Louisiana to assess penalties is located in LA R.S. 32:1312. The authority for DPS to deny application for license or revoke or suspend an outstanding license of any inspection station or the license of any person to inspect vehicles is found in LA R.S. 32:1305(C). Louisiana has indicated that the State Constitution precludes immediate suspension of licenses to inspect. The State must submit a statement from the Attorney General outlining the Constitutional prohibition and outlining the process by which the State can suspend or revoke a license within 3 business days of discovery of the violation.

The State must submit an opinion from the State Attorney General as described above as a condition of approval. Other than this condition regarding suspension authority, the State submittal meets the other requirements for approval of enforcement against inspection stations and inspectors of the Federal I/M regulations.

Section 51.365–6 Data Collection, Analysis and Reporting

The SIP needs to describe the types of data to be collected and reported.

The revised Louisiana I/M SIP provides for collection of test data to link specific test results to specific vehicles, I/M program registrants, test sites, and inspectors. The SIP lists the specific types of test data and quality control data which will be collected to evaluate program effectiveness. The data collected will be consistent with that required in the Federal I/M rule. The data will be entered into an electronic database and used to generate reports in the areas of test data, quality assurance, quality control, and enforcement.

The State submittal meets the data collection, analysis and reporting requirements of the Federal I/M regulations for approval.

Section 51.367 Inspector Training and Licensing or Certification

The SIP needs to include a description of the training program, the written and hands-on tests, and the licensing or certification process.

The revised Louisiana I/M SIP provides for the implementation of training, licensing, and refresher programs for emission inspectors consistent with EPA's regulations. The SIP describes this program including written and hands-on testing. Inspector licenses will expire two years after issuance. All inspectors must be licensed to inspect vehicles in the Louisiana I/M program.

The State must submit a revision to the Louisiana DPS Manual in order to meet the training and licensing or certification requirements of the Federal I/M regulations for approval. Additional training on evaporative system check equipment for inspector/technicians in the nonattainment area must be added to the Manual.

Section 51.368 Public Information and Consumer Protection

The SIP needs to include a plan for informing the public on an ongoing basis throughout the life of the I/M program of the air quality problem, the requirements of Federal and State law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. Also, the SIP shall include a detailed consumer protection plan.

The revised Louisiana I/M SIP commits to the establishment of an ongoing public awareness plan addressing the significance of the air quality problem, the requirements of Federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an inspection program, the ways to maintain a vehicle in low-emission condition, how to find a qualified repair technician, and the requirements of the I/M program. The SIP states under the Improving Repair Effectiveness section (40 CFR 51.369) that motorists will be offered general repair information including a list of repair facilities, information on the results of the repairs by repair facilities in the area, diagnostic information and warranty information. The SIP also describes consumer protection provisions which include a challenge mechanism, oversight of the program through the use of audits, and whistle blower protection.

The State submittal meets the public information and consumer protection requirements of the Federal I/M regulations for approval.

Section 51.369 Improving Repair Effectiveness

The SIP needs to include a description of the technical assistance program to be implemented, a description of the procedures and criteria to be used in meeting the performance monitoring requirements of the Federal I/M rule, and a description of the repair technician training resources available in the community.

The revised Louisiana I/M SIP includes a description of the technical assistance plan, repair industry performance monitoring plan, repair technician training assessment, and recognized repair technician requirements. The State will regularly inform repair facilities through the use of a newsletter regarding changes to the inspection program, training course schedules, common problems and potential solutions for particular engine families, diagnostic tips, repair, and other technical assistance issues. Repair facility performance monitoring statistics will be available to motorists whose vehicles fail the I/M test. The State will also ensure that adequate repair technician training resources are available to the repair community.

The State submittal meets the improving repair effectiveness requirements of the Federal I/M regulations for approval.

Section 51.370 Compliance With Recall Notices

The SIP needs to describe the procedures used to incorporate the vehicle lists provided in 40 CFR 51.370 (a)(1)into the inspection or registration database, the quality control methods used to insure that recall repairs are properly documented and tracked, and the method (inspection failure or registration denial) used to enforce the recall requirements.

The revised Louisiana I/M SIP commits to ensuring compliance with EPA I/M recall rules when they are finalized. Additional rulemaking by EPA related to recall requirements is needed before the State will be able to implement this provision. Inspection failure will be used to enforce the recall requirements.

The State submittal meets the compliance with recall notices requirements of the Federal I/M regulations for approval.

Section 51.371 On-road Testing

The SIP needs to include a detailed description of the on-road testing program, including the types of testing, test limits and criteria, the number of vehicles (the percentage of the fleet) to be tested, the number of employees to be dedicated to the on-road testing effort, the methods for collecting, analyzing, utilizing, and reporting the results of on-road testing and, the portion of the program budget to be dedicated to on-road testing. Also, the SIP needs to include the legal authority necessary to implement the on-road testing program, including the authority to enforce off-cycle inspection and repair requirements. In addition, emission reduction credit for on-road testing programs shall be granted for a program designed to obtain significant emission reductions over and above those already predicted to be achieved by other aspects of the I/M program. The SIP needs to include technical support for the claimed additional emission reductions.

The revised Louisiana I/M SIP includes a description of its on-road testing program. The State is planning roadside antitampering checks and evaporative emission testing. The State has committed to cover 0.5 percent of the EPA required subject vehicles. The legal authority to conduct on-road testing is in LA R.S.32:1302–1303. The SIP describes adequate funding, resources and personnel to implement the on-road testing program. The State does not claim any additional reductions from on-road testing.

Louisiana's on-road testing program will check for hydrocarbon emissions as a complement to the required evaporative emissions testing program. Because the on-road testing program does not include tailpipe testing, this section of the Federal I/M regulation cannot be satisfied. However, EPA intends to amend the Federal I/M regulation to allow States, under certain circumstances, to be exempt from the tailpipe testing requirement. The EPA

cannot proceed to final action on this SIP approval prior to completion of the amendment to the Federal I/M rule.

Section 51.372 State Implementation Plan Submissions

Under the Federal I/M rule, the SIP submittal should include legal authority for I/M program operation until such time as it is no longer necessary.

Legal authority to operate the I/M program is found in LA R.S. 32:1304.

The revised Louisiana I/M SIP commits to revising the I/M SIP as new regulations are promulgated, including the provision for inclusion of on-board diagnostic checks as they become available. In addition, the SIP commits to having all agreements with the DPS in place prior to start up. Updating the interagency agreement between LDEQ and the DPS is a deficiency that must be corrected for full approval of this SIP revision.

Section 51.373 Implementation Deadlines

The original Federal I/M rule had a January 1995 start date requirement as well as subsequent start dates for special circumstances. In response to States' requests after January 1995 for greater flexibility in implementing I/M program SIPs processed under the National Highway System Designation Act EPA SIP approvals allowed programs to start as soon as possible, and specified start dates of November 15, 1997. Then in a narrower application, a January 1, 1999, start date was designated as a result of providing greater flexibility only in Ozone Transport Regions (OTR) (61 FR 39034, July 25, 1996). The OTRs affected would normally be exempt from I/M program requirements except for their location within the OTR. The January 1, 1999, start date allows the affected areas to meet the performance standard by the Act's attainment and reasonable further progress deadlines, including the end of 1999 for serious ozone nonattainment areas. The EPA received no public comment regarding the 1999 start date in this notice. Finally, at this late date, starting the program in the Baton Rouge nonattainment area by January 1, 2000, is ''as soon as possible'' for Louisiana.

The revised Louisiana I/M SIP commits to implementing all requirements related to the I/M program by January 1, 2000. A schedule for start-up related activities is included. The EPA concludes that given the circumstances described above, this start date is approvable as being ''as soon as possible'' for Louisiana. The EPA is requiring that the I/M program start up no later than January 1, 2000.

IV. Discussion for Rulemaking Action

A. Concluding Statement of Conditional Approval

The EPA's review of this material indicates that the proposed SIP revision meets the minimum requirements of the Act and Federal I/M rules with the exceptions of the deficiencies explained in this proposal. Based upon the discussion contained in the previous analysis sections and technical support document, EPA concludes the State's submittal represents an acceptable approach to the I/M requirements and meets the requirements for conditional approval. During the comment period, Louisiana must commit to meet the proposed conditions by a date certain no later than 12 months after the date of final approval. Therefore, EPA is proposing a conditional approval of the proposed Louisiana I/M SIP revision. The EPA is soliciting public comment on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA regional office listed in the **ADDRESSES** section of this notice.

B. Explanation of the Approval

At the end of the period committed to by the State, the approval status for this program will automatically convert to a disapproval pursuant to section 110(k) of the Act, unless the conditions of the approval are satisfied. The proposed conditions are submittal of:

1. A network effectiveness demonstration.

2. A sticker-based enforcement demonstration.

3. An opinion from the State Attorney General regarding barriers to immediate suspension authority in the Louisiana Constitution.

4. An updated interagency agreement between LDEQ and DPS. Additional conditions for approval include making changes to the DPS Official Motor Vehicle Inspection Manual (the Manual). These are:

5. The weight of light- and heavy-duty vehicles covered by the program in the nonattainment area will be changed from 8,500 lb. GVWR to 10,000 lb. GVWR.

6. Test procedures for evaporative system checks in the nonattainment area will be added to the Manual.

7. A list of evaporative system check test equipment for the nonattainment area will be added to the Manual.

8. Calibration of evaporative system check test equipment will be added to the Manual.

9. Additional training on evaporative system check equipment for inspector/technicians in the nonattainment area will be added to the Manual.

Furthermore, EPA expects this program to start by January 1, 2000. If the State fails to start the program by January 1, 2000, the approval will convert to a disapproval, and the State will be notified by letter.

In addition, EPA has identified two sections of the Federal I/M regulation for which the State cannot meet the requirements as written. The EPA intends to amend the sections on test equipment and on-road testing to exempt programs that meet certain criteria from the portions of those sections which have been identified elsewhere in this action. The EPA cannot proceed to final action on this SIP approval prior to completion of these amendments to the Federal I/M rule.

V. Status of Sanctions

The proposed approval will not stop the sanction clock that has been running since February 13, 1997, but the proposal is the first step toward staying sanctions. Sanctions can be stayed after the State submits a final I/M SIP revision along with approved State regulations to implement the program. If a full approval of the SIP cannot be made at that time, EPA will then publish an interim final determination that the State has cured the deficiency that gave rise to the sanctions clock. At that time the sanctions will be stayed until the conditions are met or the approval converts to a disapproval, whichever occurs first. If the conditions are met, the threat of sanctions will be lifted. If the conditions are not met within the specified timeframe, the final conditional approval converts to a disapproval. After a letter is sent to the Governor notifying the State of the disapproval, sanctions will be immediately imposed. (*See*, Order of Sanctions Rule, 59 FR 39833, August 4, 1994).

The sanction clock for two-to-one offsets will expire on August 13, 1999, and the clock for Federal highway fund sanctions will expire on February 13, 2000. If the approval converts to a disapproval on or after August 13, 1999, offset sanctions will immediately go into effect. If a disapproval is in effect on or after February 13, 2000, highway sanctions will immediately apply.

VI. Notice of Parallel Processing

Because a Sanction Clock is running in the State, and because the Administrator agreed that EPA would work with the State to expedite processing of an I/M SIP approval, Louisiana has requested that EPA proceed with an expedited decision process for this revision to the SIP. Therefore, approval of this revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for approving a SIP submittal and amending its regulations (40 CFR part 51, Appendix V, section 2.3). If the State's proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas specified in this document, EPA proposes to publish a final rulemaking on the revisions after responding to any submitted comments. Final rulemaking action by EPA will occur only after the SIP revision has been fully adopted by Louisiana and submitted formally to EPA for incorporation into the SIP. In addition, any action by the State resulting in undue delay in the adoption of the SIP by the State, or adoption of the regulations by the DPS may result in a re-proposal altering the approvability of the SIP.

VII. Notice of Proposed Rulemaking

The EPA is proposing to grant conditional approval of the State's submission contingent upon the State satisfying the nine conditions listed above, and the I/M program starting no later than January 1, 2000. The EPA proposes that if the State fails to meet the conditions, or fails to start the program on the date identified above, the approval will convert to a disapproval, and EPA will send a letter notifying the State of the conversion to disapproval.

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

VIII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concern, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal government ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this proposed rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''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.

The proposed rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 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 by consulting, E.O. 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, E.O. 13084 requires EPA to develop an effective process permitting elected 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.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because conditional approval of SIP submittals under section 110 and subchapter I, part D of the Act does not create any new requirements but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into

the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this potential disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

F. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 14, 1998.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 98–34420 Filed 12–29–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ079; FRL–6212–5]

RIN 2060–A122

Approval and Promulgation of Implementation Plans; Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing to approve under the Clean Air Act (CAA or Act) a revision to the Arizona State Implementation Plan (SIP) reflecting Arizona State legislation that provides for the expeditious implementation of best management practices to reduce fugitive dust from agricultural sources in the Maricopa County (Phoenix) PM–10 nonattainment area. Because EPA is proposing to approve the State legislation as meeting the reasonably available control measure (RACM) requirements of the Act, EPA is also proposing to withdraw a federal implementation plan (FIP) commitment, promulgated under section 110(c) of the Act, to adopt and implement RACM for agricultural fields and aprons in the Maricopa area.

DATES: Written comments will be accepted until January 29, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: John Ungvarsky, EPA Region 9, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, (Phone: 415–744–1286).

A copy of docket No. A–98–45, containing material relevant to EPA's proposed action, is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with John Ungvarsky to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of docket no. A–98–45 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability

This document is also available as an electronic file on EPA's Region 9 Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: For questions and issues regarding this proposed rulemaking contact, John Ungvarsky (415) 744–1286.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

1. Designation and Classification

Portions of Maricopa County [1] are designated nonattainment for the PM–10 national ambient air quality standards (NAAQS) [2] and were originally classified as ''moderate'' pursuant to section 188(a) of the Clean Air Act (CAA or Act). 56 FR 11101 (March 15, 1991). On May 10, 1996, EPA reclassified the Maricopa County PM–10 nonattainment area to ''serious'' under CAA section 188(b)(2). 61 FR 21372. Having been reclassified, Phoenix is required to meet the serious area requirements in the CAA, including a demonstration that best available control measures (BACM) will be implemented by June 10, 2000. CAA sections 188(c)(2) and 189(b). While the Phoenix PM–10 nonattainment area is currently classified as serious, today's proposed actions relate only to the moderate area statutory requirements.

Pursuant to section 189(b)(2), the State of Arizona was required to submit a serious area plan addressing both PM–10 NAAQS for the area by December 10, 1997. The State has not yet submitted that plan.

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[1] ''Maricopa,'' ''Maricopa County'' and ''Phoenix'' are used interchangeably throughout this proposal to refer to the nonattainment area.

[2] There are two PM–10 NAAQS, a 24-hour standard and an annual standard. 40 CFR 50.6. EPA promulgated these NAAQS on July 1, 1987 (52 FR 24672), replacing standards for total suspended particulate with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter ($\mu g/m^3$). The 24-hour PM–10 standard of 150 $\mu g/m^3$ is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years. See 40 CFR 50.6 and 40 CFR part 50, Appendix K.

On July 18, 1997, EPA revised both the annual and the 24-hour PM–10 standards and also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5)(62 FR 38651). Today's proposed actions relate only to the CAA requirements concerning the 24-hour and annual PM–10 standards as originally promulgated in 1987.

2. Moderate Area Planning Requirements and EPA Guidance

The air quality planning requirements for PM–10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Clean Air Act. Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, by November 15, 1991 provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology (RACT)) shall be implemented no later than December 10, 1993. CAA sections 172(c)(1) and 189(a)(1)(C).[3] Since that deadline has passed, EPA has concluded that the required RACM/RACT must be implemented ''as soon as possible.'' *Delaney* v. *EPA*, 898 F.2d 687, 691 (9th Cir. 1990). EPA has interpreted this requirement to be ''as soon as practicable.'' See 55 FR 41204, 41210 (October 1, 1990) and 63 FR 28898, 28900 (May 27, 1998).

EPA has issued a ''General Preamble''[4] describing EPA's preliminary views on how the Agency intends to review state implementation plans (SIPs) and SIP revisions submitted under Title I of the Act, including those state submittals containing moderate PM–10 nonattainment area SIP provisions. The methodology for determining RACM/RACT is described in detail in the General Preamble. 57 FR 13498, 13540–13541. With respect to PM–10, Appendix C1 of the General Preamble suggests starting to define RACM with the list of available control measures for fugitive dust and adding to this list any additional control measures proposed and documented in public comments. Any measures that apply to de minimis emission sources of PM–10 and any measures that are unreasonable for technology reasons or because of the cost of the control in the area can then be culled from the list. In addition, potential RACM may be culled from the list if a measure cannot be implemented on a schedule that would advance the date for attainment in the area. 57 FR 13498, 13560. 57 FR 18070, 18072 (April 28, 1992).

Moderate area plans were also required to meet the generally applicable SIP requirements for reasonable notice and public hearing under section 110(a)(2), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111 and EPA guidance implementing these provisions.

B. EPA's Moderate Area PM–10 FIP for Phoenix

On August 3, 1998, EPA promulgated under the authority of CAA section 110(c)(1) a federal implementation plan (FIP) to address the CAA's moderate area PM–10 requirements for the Phoenix PM–10 nonattainment area. 63 FR 41326 (August 3, 1998).

In the FIP, EPA promulgated, among other things, for both the annual and 24-hour PM–10 NAAQS, a demonstration that RACM will be implemented in the Phoenix area as soon as practicable.[5] As part of its RACM demonstration, EPA promulgated an enforceable commitment, codified at 40 CFR 52.127, to ensure that RACM for agricultural sources will be expeditiously adopted and implemented. See 63 FR 41326, 41350.[6]

II. Arizona Legislation for the Agricultural Sector

On May 29, 1998, Arizona Governor Hull signed into law Senate Bill 1427 (SB 1427) which revised title 49 of the Arizona Revised Statutes (ARS) by adding section 49–457. This legislation establishes an agricultural best management practices (BMPs) committee for the purpose of adopting by rule by June 10, 2000, an agricultural general permit specifying BMPs for regulated agricultural activities[7] to reduce PM–10 emissions in the Maricopa PM–10 nonattainment area. ARS 49–457.A-F. BMPs are defined in subsection N.2 of section 49–457 as ''techniques verified by scientific research, that on a case by case basis are practical, economically feasible and effective in reducing PM–10 particulate emissions from a regulated agricultural activity.'' Subsection N.1 defines ''agricultural general permit'' to mean:

> best management practices that: (a) reduce PM–10 particulate emissions from tillage practices and from harvesting on a commercial farm.[;] (b) reduce PM–10 particulate emissions from those areas of a commercial farm that are not normally in crop production. [;] (c) reduce PM–10 particulate emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.

Subsection M provides for the initiation of BMP implementation through the commencement of an education program by June 10, 2000. Subsection H requires the Arizona Department of Environmental Quality (ADEQ) to submit to EPA a list of BMPs as a revision to the applicable implementation plan within 60 days of their adoption.[8]

The legislation specifies ADEQ's authority to enforce the general permit through a series of compliance actions. ARS 49–457.I–K. However, subsection G of section 49–457 also specifies that:

> [n]otwithstanding subsections I, J and K of this section, a person engaged in a regulated agricultural activity on the effective date of this Act shall comply with the general permit as provided in subsection H of this section by December 31, 2001. A person who commences a regulated agricultural activity after December 31, 2000, shall comply with the general permit within eighteen months of commencing the activity.

On September 4, 1998, the State of Arizona submitted ARS 49–457 to EPA

[3] States with moderate PM–10 areas were also required to submit either a demonstration that the plan would provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable (CAA section 189(a)(1)(B)); and, for plan revisions demonstrating impracticability, a demonstration of reasonable further progress (RFP) meeting the requirements of CAA sections 172(c)(2) and 171(1). Section 171(1) defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by part D of the Act or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable attainment date.''

[4] See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[5] In addition to the RACM demonstration, EPA also promulgated a demonstration of reasonable further progress and a demonstration that it was impracticable for the Phoenix area to attain either the annual or 24-hour PM–10 NAAQS by the applicable attainment deadline pursuant to CAA sections 172(c)(2) and 189(a)(1)(B). 63 FR 41326, 41340 and 41342.

[6] 40 CFR 52.127 provides that ''[t]he Administrator shall promulgate and implement reasonably available control measures (RACM) pursuant to section 189(a)(1)(C) of the Clean Air Act for agricultural fields and aprons in the Maricopa County (Phoenix) PM–10 nonattainment area according to the following schedule: by no later than September, 1999, the Administrator shall sign a Notice of Proposed Rulemaking; by no later than April, 2000, the Administrator shall sign a Notice of Final Rulemaking; and by no later than June, 2000, EPA shall begin implementing the final RACM.''

[7] ''Regulated agricultural activities'' are defined as ''commercial farming practices that may produce PM–10 particulate emissions within the Maricopa PM–10 particulate nonattainment area.'' ARS 49–457.N.4.

[8] It is not entirely clear from the language of subsection H whether the statute requires the submittal to EPA of the general permit, BMPs or both as an applicable implementation plan revision. However, as long as either the BMPs or general permit are submitted, once approved by EPA, the agricultural control measures will be federally enforceable.

for inclusion in the Arizona SIP for the Phoenix PM–10 nonattainment area as meeting the RACM requirements of CAA section 189(a)(1)(C) and requested that the Agency approve that legislation in place of the FIP commitment in 40 CFR 52.127.[9] On October 27, 1998, EPA found the submittal to be complete pursuant to EPA's completeness criteria set forth in 40 CFR part 51, Appendix V.[10]

III. SIP Approval Criteria

Once a SIP submittal is deemed complete, EPA must next determine if the submittal is approvable as a revision to the SIP. In the case of the Arizona legislation, EPA must first determine whether ARS 49–457 meets the RACM requirements of CAA section 189(a)(1)(C) and EPA guidance interpreting that provision. EPA must also determine that the legislation meets the general SIP requirements described in section I.A.2 above.

Finally, in order for EPA to approve the SIP revision, EPA must determine that the SIP submittal complies with CAA section 110(l). Section 110(l) states that the ''Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress * * * or any other applicable requirement of [the Clean Air] Act.'' EPA has concluded that where previously-promulgated FIP elements that have been found to comply with the applicable requirements of the Act, including those provisions pertaining to attainment and RFP, are being replaced by elements of a plan revision that EPA determines are substantially equivalent, that plan revision would satisfy the requirements of section 110(l).

IV. Evaluation of the Arizona Legislation

A. RACM and General SIP Requirements

As described in greater detail in section II above, ARS 49–457 requires that the agricultural BMPs committee established in the legislation must adopt BMPs (to be embodied in a general permit) for agricultural activities in the Maricopa PM–10 nonattainment area by June 10, 2000. The legislation also requires the committee to commence an education program by that date. As such, ARS 49–457 constitutes an enforceable commitment by the State to undertake these activities. Moreover, the legislation requires any person engaged in a regulated agricultural activity to comply with the general permit by December 31, 2001.

As discussed in section I.B, on August 3, 1998, EPA promulgated a moderate area PM–10 FIP for the Phoenix area that includes an enforceable commitment to adopt and begin implementing RACM for the agricultural sector by June 2000. In the proposed and final rules for the FIP, EPA explained at length the Agency's reasons for promulgating a commitment to adopt RACM in the future (rather than an immediately effective regulation) and for its adoption and implementation schedule. See 63 FR 15920, 15935–15937; 63 FR 41327, 41332–41334.

In general, EPA believes that because agricultural sources in the United States vary by factors such as regional climate, soil type, growing season, crop type, water availability, and relation to urban centers, each PM–10 agricultural strategy is uniquely based on local circumstances. Furthermore, EPA determined that the goal of attaining the PM–10 standards in Maricopa County with respect to agricultural sources would be best served by engaging all interested stakeholders in a joint comprehensive process on the appropriate mix of agricultural controls to implement in Maricopa County. EPA stated its belief that this process, despite the additional time needed to work through it, will ultimately result in the best and most cost-effective controls on agricultural sources in the County.

In the FIP notices, EPA also explained its intention to meet its RACM commitment by developing and promulgating BMPs. Given the number of potential BMPs, the variety of crops types, the need for stakeholder input, and the time necessary to develop the BMPs into effective control measures, EPA believes that the adoption and implementation schedule in the FIP is as expeditious as practicable and meets the Act's 189(a)(1)(C) requirement.[11]

EPA has evaluated the Arizona legislation and concluded that its requirements are substantially similar to those in the FIP commitment for agriculture. To the extent that the State statute differs from the FIP commitment, EPA believes that the former contains more substance and greater procedural detail that better informs the BMP development, adoption and implementation process. See, e.g., ARS 49–457.B, F, G and M.

While ARS 49–457 does not use the term ''RACM,'' its definition of BMPs is consistent with the criteria specified in the General Preamble. Likewise, the formation of a BMP committee, the requirements for BMP adoption and initiation of an educational program by June 10, 2000, and the requirement for full compliance with the general permit by December 31, 2001 is consistent with the process and timing that EPA determined in the FIP to represent expeditious implementation of RACM as required by CAA section 189(a)(1)(C).

EPA has also concluded that subsection F of section 49–457 provides the necessary assurances of adequate personnel and funding required by CAA section 110(a)(2)(E)(i) to develop and adopt the required BMPs.[12] In addition, ADEQ intends to fund the BMP rulemaking process through its CAA section 105 grant. That funding will be used to cover administrative costs of the BMP committee. The BMP general permit program will be funded from the resources currently allocated to the State's existing general permit program authorized under ARS 49–426.H.[13] EPA intends to assess the adequacy of the State's enforcement program, including methods and long-term resources, in connection with future rulemakings on the BMPs and/or general permit submitted by the State for inclusion in the SIP. See footnote 8.

B. CAA Section 110(l)

As discussed in the previous section, EPA has determined that the State legislation provides for the implementation of RACM for agricultural sources as expeditiously as practicable. Therefore, approval of the legislation and withdrawal of the FIP RACM commitment will not interfere with the RACM requirements of CAA section 189(a)(1)(C).

As stated in footnote 5, EPA in the FIP promulgated a demonstration, meeting the requirements of CAA section 189(a)(1)(B), that the Phoenix area could

[9] Letter from Russell Rhoades, ADEQ, to Felicia Marcus, EPA, regarding submittal of a state implementation plan revision: agricultural best management practices; September 4, 1998.

[10] Letter from David Howekamp, EPA, to Russell Rhoades, ADEQ, regarding completeness determination; October 27, 1998.

[11] In response to its FIP proposal, EPA received a number of comments on the Agency's proposed commitment for the agricultural sector. These comments included claims that a commitment would not meet the CAA requirements and EPA guidance for enforceable measures as expeditiously as practicable and that the proposed adoption and implementation schedule was too protracted. The reader is referred to 63 FR 41326, 41332–41334 for EPA's responses to these and other comments on its commitment for agriculture.

[12] Subsection F of ARS 49–457 provides that: ''[t]he Department of Environmental Quality, the Department of Agriculture and the College of Agriculture of the University of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The Department of Environmental Quality shall provide the necessary staff support and meeting facilities for the committee.''

[13] Attachment 3 to letter from Russell Rhoades to Felicia Marcus; September 4, 1998.

not practicably attain either the annual or 24-hour PM–10 NAAQS by the applicable attainment deadline, December 31, 2001,[14] with the implementation of RACM.

The Agency determined that, even assuming an unrealistic 100 percent control of emissions from agricultural sources subject to the FIP commitment, simulated PM–10 concentrations are still over the annual standard. Thus, EPA found, pursuant to CAA section 189(a)(1)(B), that attainment of the annual PM–10 standard by December 31, 2001 is impracticable with the implementation of RACM. 63 FR 41326, 41340.

With respect to timely attainment of the 24-hour standard, EPA found that attainment at the evaluated monitoring sites would require substantial reductions from agricultural sources. EPA concluded that while reductions from agricultural sources are expected through the future implementation of the federal BMPs, EPA could not currently quantify the impact of these BMPs because they had yet to be developed. Therefore it was not possible for the Agency to determine an expected level of control. 63 FR 41326, 41341.

The BMPs developed pursuant to the Arizona legislation will be adopted and implemented by the same process and consistent with the schedule provided for in the FIP commitment for agricultural RACM. Therefore, the approval of ARS 49–457 and the withdrawal of the FIP commitment in 40 CFR 52.127 will not change the impracticability demonstration in the FIP. As a result, that impracticability demonstration will continue to meet the requirements of section 189(a)(1)(B). Thus EPA's proposed actions will not interfere under section 110(l) with the attainment requirements of the CAA.

EPA has also concluded that approval of ARS 49–457 and withdrawal of the FIP commitment will not interfere with the RFP requirements in sections 172(c) and 171(1) of the CAA. For moderate PM–10 areas demonstrating impracticability, EPA has determined that these statutory requirements are met by a showing that the implementation of RACM has resulted in incremental emission reductions below pre-implementation levels. See, e.g., 63 FR 41326, 41342. In the FIP, EPA found that the CAA's RFP requirements have been met for both the annual and 24-hour PM–10 standards. See footnote 5. With respect to the annual standard, EPA stated that:

> in order to show annual reductions from 2000 to 2001, emission reductions of more than 239 mtpy would need to result from the implementation of the BMPs on agricultural sources. The projected regional inventory for agricultural sources is 6,972 mtpy in 2001.* * * The FIP rule will need to reduce emissions in this category by slightly more than 3 percent in order to demonstrate annual incremental reductions between 2000 and 2001.* * * EPA has every confidence that such minimal reductions can be achieved.

63 FR 41326, 41343. With respect to the 24-hour standard, EPA found that, assuming no emission reductions from agricultural sources, the statutory RFP requirements were met at the evaluated monitoring sites. *Id.*

Again, ARS 49–457 contains a commitment to implement RACM level controls for agricultural sources consistent with the FIP commitment. Therefore, the approval of ARS 49–457 and the withdrawal of the FIP commitment in 40 CFR 52.127 will not change the RFP demonstrations in the FIP. As a result, those RFP demonstrations will continue to meet the requirements of sections 172(c) and 171(1). Thus EPA's proposed actions will not interfere under section 110(l) with the RFP requirements of the CAA.[15]

As the above analysis demonstrates, the State legislation is substantially equivalent to the FIP provisions and, therefore, clearly satisfies the requirements of section 110(l).

V. Proposed Actions

EPA has evaluated ARS 49–457 and has determined that it is consistent with the CAA and EPA regulations. Therefore, EPA is proposing to approve ARS 49–457 under section 110(k)(3) of the CAA as meeting the requirements of sections 110(a) and 189(a)(1)(C).

Because EPA is proposing to approve the Arizona statute as meeting the RACM requirements of the CAA for agricultural sources in the Phoenix area, EPA is also proposing to withdraw the FIP RACM commitment for such sources. Specifically, the Agency is proposing to delete § 52.127, Commitment to Promulgate and Implement Reasonably Available Control Measures for the Agricultural Fields and Aprons, in subpart D of part 52, chapter I, title 40 of the Code of Federal Regulations. EPA believes that the approval of the State statute and withdrawal of the FIP commitment gives preference to the State's controls consistent with the CAA's intent that states have primary responsibility for the control of air pollution within their borders. CAA sections 101(a)(3) and 107(a).

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

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's proposed SIP approval and FIP withdrawal actions do not create a mandate on state, local or tribal governments. The proposed actions do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to these proposed actions.

[14] EPA has concluded that since the CAA moderate area attainment deadline, December 31, 1994, in section 188(c)(1) has passed and the Maricopa area has been reclassified, the only attainment deadline currently applicable to the area is the serious area deadline provided for in CAA section 188(c)(2); i.e, achievement of attainment as expeditiously as practicable, but no later than December 31, 2001. For a discussion of this conclusion and an analysis of the issue, see 63 FR 15920, 15926.

[15] For the reasons set forth in this section, EPA has also concluded that its proposed actions will not interfere with any applicable requirements of the CAA concerning the PM–2.5 standards.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''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. These proposed actions are not subject to Executive Order 13045 because they are not economically significant as defined under Executive Order 12866 and do not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian tribal Governments, 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 by 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.'' Today's proposed actions do not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these proposed actions.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These proposed actions will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because these proposed actions do not create any new requirements, I certify that these proposed actions will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

EPA has determined that these proposed actions do not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. These proposed actions approve pre-existing requirements under State or local law and withdraw Federal requirements, and impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from these proposed actions.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, Sec. 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. These federal actions do not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Dated: December 22, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–34422 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Inspector General

45 CFR Part 61

RIN 0991–AA98

Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions—Extension of Comment Period

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 30, 1998, we published a notice of proposed rulemaking designed to set forth the policy and procedures for implementing the new Healthcare Integrity and Protection Data Banks (HIPDB), in accordance with the statutory requirements of section 1128E of the

Social Security Act, as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (63 FR 58341). We are extending the comment period at the request of several organizations.

DATES: To assure consideration, public comments must be delivered to the address provided below by January 11, 1999.

ADDRESSES: Please mail or deliver your written comments to the following address: Health Resources and Services Administration, Bureau of Health Professions, Division of Quality Assurance, Room 8–55, Attention: OIG–46–P, 5600 Fishers Lane, Rockville, Maryland 20857.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX). In commenting, please refer to file code OIG–46–P.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION: The proposed regulations are designed to implement section 221(a) of the HIPAA, which specifically direct the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners; and maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. We indicated in the preamble of that document that we are allowing a 60-day public comment period during which time interested parties could submit their comments and recommendations regarding the implementation of the Healthcare Integrity and Protection Data Bank. The Department agreed to consider all comments received on or before December 29, 1998.

Since publication of the proposed rule, we have received requests from several outside organizations and associations to extend the existing comment period beyond the 60-day period. Because of our desire to work with affected outside organizations and associations in considering their recommendations in establishing viable and operational data bank, and concerns from some parties that the holiday season has hampered their ability to poll constituents in a timely and effective manner to provide comprehensive comments, we have agreed to extend the public comment period to this notice of proposed rulemaking until January 11, 1999.

Dated: December 8, 1998.

Michael Mangano,

Principal Deputy Inspector General.

Approved: December 21, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–34350 Filed 12–29–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF36

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Cactus Ferruginous Pygmy-Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). A total of approximately 730,565 acres of riverine riparian habitat and upland habitat are proposed. Proposed critical habitat is in Pima, Cochise, Pinal, and Maricopa counties, Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until March 1, 1999. We will hold three public hearings on this proposed rule; we will publish the dates and locations of these hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

ADDRESSES: Send comments and information to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (referred to as ''pygmy-owl'' in this proposed rule) is in the Order Strigiformes and the Family Strigidae. It is a small bird, approximately 17 centimeters (6 3/4 inches) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish-brown overall, with a cream-colored belly streaked with reddish brown. Some individuals are grayish brown, rather than reddish brown. The crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. The ears lack tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars. The pygmy-owl is diurnal (active during daylight), and its call, heard primarily near dawn and dusk, is a monotonous series of short notes.

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of *Glaucidium brasilianum cactorum* is listed as an endangered species.

The pygmy-owl in Arizona occurs in a variety of scrub and woodland communities, including riverbottom woodlands, woody thickets (''bosques''), and Sonoran desertscrub. Unifying habitat characteristics among these communities are fairly dense woody thickets or woodlands, with trees and/or cacti large enough to provide nesting cavities. The pygmy-owl occurs at low elevations, generally below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993).

The pygmy-owl's primary habitats were riparian cottonwood (*Populus fremontii*) forests, mesquite bosques, and Sonoran desertscrub, but the subspecies currently occurs primarily in Sonoran desertscrub associations of palo verde (*Cercidium* spp.), bursage (*Ambrosia* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis velutina*, and

P. glandulosa), acacia (*Acacia* spp.), and giant cacti such as saguaro (*Carnegiea giganteus*), and organ pipe (*Stenocereus thurberi*) (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988). Primary prey include various reptiles, insects, birds, and small mammals (Proudfoot 1996).

Previous Federal Action

We included *Glaucidium brasilianum cactorum* in our Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. After soliciting and reviewing additional information, we elevated *G. b. cactorum* to category 1 status throughout its range in our November 21, 1991, notice of review (56 FR 58804). Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned us to list the pygmy-owl as an endangered species under the Act. The petitioners also requested designation of critical habitat. In accordance with section 4(b)(3)(A) of the Act, on March 9, 1993, we published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we published a proposed rule to list the pygmy-owl as endangered in Arizona and threatened in Texas on December 12, 1994 (59 FR 63975). We proposed designation of critical habitat in Arizona. After a review of all comments received in response to the proposed rule, we published a final rule on March 10, 1997 (62 FR 10730), listing the pygmy-owl as endangered in Arizona. We determined that listing in Texas was not warranted. We also determined that critical habitat designation was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior (Secretary) for failure to designate critical habitat for the cactus ferruginous pygmy-owl and the Huachuca water umbel (*Lilaeopsis schaffneriana* ssp. *recurva*), a plant (Southwest Center for Biological Diversity v. Bruce Babbitt, Secretary of the Department of the Interior; CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating: ''There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available.''

On November 25, 1998, in response to a motion by the Plaintiffs requesting clarification of the October 7, 1998, order, Judge Marquez further ordered ''that within 30 days of the date of this Order, the Secretary shall issue the Proposed Rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within six months of issuing the Proposed Rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel.''

Absent the court's order, the processing of this proposed rule would not conform with our Fiscal Year 1998 and 1999 Listing Priority Guidance, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. The Service's Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires us to base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could develop the essential habitat features (primary constituent elements described below) and that are essential for the conservation of a listed species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other

forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation would not afford any protection against such activities.

Section 7(a)(2) of the Act prohibits Federal agencies from funding, authorizing, or carrying out actions likely to jeopardize the continued existence of a threatened or endangered species, or that are likely to destroy or adversely modify critical habitat. ''Jeopardize the continued existence'' is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' of critical habitat occurs when a Federal action appreciably reduces the value of critical habitat for the survival and recovery of the listed species. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are similar.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain all of the primary constituent elements but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Section 3(5)(C) of the Act generally requires that not all areas potentially occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the conservation of the species. Areas that contain one or more of the primary constituent elements, but that are not included within critical habitat boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, or rearing of offspring; and
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the pygmy-owl are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, and sheltering. The primary constituent elements are found, or could develop, in areas that support or have the potential to support riparian forests, riverbottom woodlands, xeroriparian (dry riparian) forests, plains and desert grassland, and the Arizona upland subdivision of Sonoran desertscrub (Turner and Brown 1982). Within these vegetative communities, specific plant associations that contain or could develop the primary constituent elements include those dominated by cottonwood, willow (*Salix* spp.), ash (Fraxinus velutina), mesquite, palo verde, ironwood, saguaro cactus, organ pipe cactus, creosote (*Larrea tridentata*), acacia, and/or hackberry (*Celtis* spp.).

In river floodplains, the presence of surface or subsurface water is critical in maintaining pygmy-owl habitat. Riverine riparian woodlands and thickets are dependent on availability of groundwater at or near the surface. Surface or subsurface moisture may also be important in maintaining various species comprising the pygmy-owl's prey base.

Methods

In developing this critical habitat proposal for the pygmy-owl, we attempted to form an interconnected system of suitable and potential habitat areas extending from southern Arizona to the northernmost recent pygmy-owl occurrence. Areas proposed as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are areas within the geographical area occupied by the species that are essential to the conservation of the species and in need of special management considerations or protection.

In an effort to map areas essential to the conservation of the species, we used data on known pygmy-owl locations to initially identify important areas. We then connected these areas based on the topographic and vegetative features believed most likely to support resident pygmy-owls and/or facilitate movement of birds between known habitat areas. Facilitating movement of birds between habitat areas is important for dispersal and gene flow. In selecting areas, we avoided private lands to the extent possible, and instead concentrated on public (State and Federal) lands. However, we are proposing designation as critical habitat some important privately owned areas, such as the area northwest of Tucson which supports the greatest known concentration of pygmy-owls in Arizona.

In selecting areas for inclusion in proposed critical habitat, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to pygmy-owl conservation. Given the short period of time in which we were required to complete this proposal, we were unable to map critical habitat in sufficient detail to exclude all such areas. However, within the delineated critical habitat boundaries, only lands containing, or having the potential to develop, the primary constituent elements described above are considered critical habitat. Existing features and structures within the proposed area, such as buildings, roads, aqueducts, railroads, and other features, do not contain, and do not have the potential to develop, the primary constituent elements and are not considered critical habitat.

In selecting areas to propose as critical habitat, we attempted to exclude areas believed to be adequately protected, or where current management is compatible with pygmy-owls and is likely to remain so into the future. We excluded National Park lands (Organ Pipe Cactus National Monument and Saguaro National Park) and national wildlife refuges (Cabeza Prieta and Buenos Aires National Wildlife Refuges). We also excluded non-Federal lands covered by a legally operative incidental take permit for pygmy-owls issued under section 10(a)(1)(B) of the Act. However, we did not exclude areas currently managed in a manner compatible with pygmy-owls where

such management may not be assured in the future (e.g., county and State parks).

In addition, lands of the Tohono O'odham Indian Reservation are not included in this proposal. We are aware that pygmy-owls and pygmy-owl habitat likely exist on the Reservation, and we believe these Tribal lands are important to the species' continued existence in Arizona. However, the short amount of time given by the court to propose critical habitat precluded us from adequately coordinating with the Tribe to obtain pygmy-owl location and habitat information. In addition, we were unable to assess whether current or future tribal management is likely to maintain pygmy-owls into the future, although the probable existence of both pygmy-owls and pygmy-owl habitat lead us to believe that current management may be compatible with the species. In accordance with Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, subsequent to this proposal, we will coordinate with the Tribe to determine whether any Tribal lands are essential for the conservation of the species and require special management considerations or protection.

We did not propose all pygmy-owl historical habitat as critical habitat. We proposed those areas that we believe are essential for the conservation of the pygmy-owl and in need of special management or protection.

In summary, the proposed critical habitat areas described below, and protected areas either known or suspected to contain some of the primary constituent elements but not proposed as critical habitat (e.g., National Park land, national wildlife refuge lands, etc.), constitute our best assessment of areas needed for the species' conservation. As described above, we will coordinate with the Tohono O'odham Indian Tribe to determine whether any Tribal lands are essential for the conservation of the species and require special management considerations or protection. Also, we recently appointed the Cactus Ferruginous Pygmy-Owl Recovery Team that will develop a recovery plan for the species. The experts on this team will conduct a far more thorough analysis than we were able to conduct in the short amount of time allowed by the Court Order. Upon the team's completion of a recovery plan, we will evaluate the plan's recommendations and reexamine if and where critical habitat is appropriate.

Proposed Critical Habitat Designation

In determining areas that are essential for the survival and recovery of the species, we used the best scientific information obtainable in the time allowed by the court. This information included habitat suitability and site-specific species information. To date, limited survey effort or research has been done to identify and define specific habitat needs of pygmy-owls in Arizona or to determine their distribution. Only preliminary habitat assessment work has begun over small portions of the State, primarily on Bureau of Land Management (BLM) lands. We emphasized areas containing most of the verified pygmy-owl occurrences, especially recent ones. In order to maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included areas that allow movement between areas supporting pygmy-owls.

Table 1 shows the approximate acreage of proposed critical habitat by county and land ownership. Critical habitat proposed for the pygmy-owl includes river floodplains and Sonoran desertscrub communities in Pima, Cochise, Pinal, and Maricopa Counties, Arizona. To provide additional information, we have grouped areas proposed as critical habitat into critical habitat units (see maps). A brief description of each unit and reasons for proposing as critical habitat are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT ACREAGE BY COUNTY AND LAND OWNERSHIP

[Note: Acreage estimates are from maps cited in legal descriptions]

	Pima County	Cochise County	Pinal County	Maricopa County	Total
Forest Service	0	0	4,160	32,840	37,000
Bureau of Land Management	21,070	0	90,640	0	111,710
State	154,750	2,420	258,005	0	420,175
Private	60,060	2,420	74,400	100	136,980
Other*	20,700	0	4,000	0	24,700
Total	261,580	4,840	431,205	32,940	730,565

* Includes: Bureau of Reclamation, Tucson Mountain County Park, Department of Defense.

Unit 1

This unit lies between Buenos Aires National Wildlife Refuge and the Tohono O'odham Indian Reservation. This unit is primarily State Trust lands, with some dispersed private ownership, and contains upland habitats and washes that are suitable for pygmy-owls. This area is important because it is close to recent pygmy-owl occurrences on the nearby refuge, and because it would provide additional opportunities for demographic and genetic interchange between pygmy-owls in Mexico and the United States as well as expansion of populations for recovery. Proposed critical habitat in this area, together with protected lands on the refuge and habitat on the Reservation, constitutes a large block of pygmy-owl habitat.

Unit 2

This unit connects habitat on the Tohono O'odham Indian Reservation to habitat in Saguaro National Park West and Tucson Mountain County Park. Ownership in this area is primarily BLM, State Trust, Bureau of Reclamation, Pima County, and some private. The area consists of Sonoran desertscrub and mesquite bosques interspersed by washes. This east-west habitat corridor, together with the ''Garcia Strip'' of the Reservation, includes suitable habitat for occupancy, movement, and genetic interchange of pygmy-owls between the Reservation and the western Tucson region.

Unit 3

This unit connects suitable habitat in Unit 2 and Saguaro National Park West to Unit 4, which has the highest known concentration of pygmy-owls in Arizona. The land ownership in this area is mostly private. This area includes a recent pygmy-owl site west of Interstate 10 and provides a possible

connection to habitat in the northwest Tucson region. Because of existing and past land management practices and development, this area contains the narrowest habitat linkage between other areas proposed for critical habitat. Few options currently exist for movement of pygmy-owls in this portion of their known range based on our limited knowledge of their movement between areas at this time (Scott Richardson, Arizona Game and Fish Department (AGFD), pers. comm. 1998).

Unit 4

This unit is located in the northwest portion of Tucson north of Interstate 10 and contains the highest number of known pygmy-owls in Arizona. This unit contains mostly private and county lands. The areas proposed for critical habitat include known locations of pygmy-owls and adjacent habitats and is bounded by La Cholla Boulevard to the east, Cortaro Road to the south, Interstate 10 to the west, and the Tortolita Mountains to the north. In the immediate Tucson area, and to the south of Unit 4, very little suitable habitat remains due to residential, commercial and agricultural development. Historically, these upland and riparian areas may have supported pygmy-owls. The area proposed for critical habitat contains stands of ironwood and saguaro, mesquite bosques, and several washes, and includes the most contiguous and highest quality pygmy-owl habitat based on current information (Scott Richardson, AGFD, pers. comm. 1998).

Units 5A and 5B

Unit 5 includes two habitat corridors to connect habitat in the northwest Tucson region to riparian habitats to the north on the Gila River (5A) and to the east on San Pedro River (5B). Land ownership is mostly BLM, State Trust, and private. This area also includes recent pygmy-owl occurrences in southern Pinal County, although only a limited number of surveys have been conducted to determine if pygmy-owls are present in this area. Relatively intact riparian woodland habitats still remain along portions of the Gila and San Pedro rivers. These units contain historic pygmy-owl locations and/or areas thought to contain suitable upland habitat (Dave Krueper, BLM, pers. comm. 1998).

Limited habitat assessment has been completed within these corridors and few historic or current pygmy-owl occurrences have been documented. However, the BLM has conducted some habitat assessments on their lands in this area and rated the habitat suitability for pygmy-owls as moderate to high (David Krueper, pers. comm. 1998). We included these two corridors because they constitute areas for dispersal and survival. Where possible, we avoided some of the higher elevation areas which likely contain lower quality habitat.

We are only beginning to understand the importance of upland habitat to the pygmy-owl. Although historical observations of pygmy-owls were almost exclusively in riparian woodlands (Breninger 1898 *in* Bent 1938), almost all of the recent records of pygmy-owls have been in Sonoran desertscrub and mesquite bosque upland areas and washes. Based on the current information, we believe these two corridors (5A and 5B) provide the highest potential for supporting resident and dispersing pygmy-owls through this area. Without these habitat linkages, demographic and genetic connectivity and exchange may not be maintained between known populations in the northwest Tucson region and riparian habitats in the Gila and San Pedro rivers.

Unit 6

This unit includes the riparian woodlands of the middle and lower San Pedro River and a portion of the Gila River. There were four pygmy-owls documented in the mid-1980s from lower San Pedro River woodlands. Similar riparian woodlands and associated upland habitats with saguaro cactus are present along the San Pedro upstream (to the south) to approximately the town of Cascabel.

The San Pedro River riparian corridor connects to the Gila River to the north. This section of the Gila River also contains riparian woodland habitats which we believe are suitable for pygmy-owls (Roy Johnson pers. comm. 1998). We are proposing these areas as critical habitat because of the importance, based on the early records of naturalists during the late 1800s and early 1900s, of riparian woodland habitats, the presence of suitable habitat, and the linkage these areas provide to other historical locations and suitable habitat to the north.

Unit 7

This unit links riparian habitat on the Gila River to other upland habitats and ultimately to the remaining woodland habitat along the Salt River where pygmy-owls were collected in the 1940s and 1950s and where this species was recorded in the early 1970s. Land ownership in this area is primarily BLM, State Trust, Forest Service, and some dispersed private. Although recent surveys have not located pygmy-owls in riparian areas in this unit, riparian woodland habitats remain along portions of the Salt River in this area (Roy Johnson pers. comm. 1998). In delineating this unit, we considered elevation, topographic features, and existing developed areas and determined that a habitat linkage that includes Sonoran upland desertscrub will provide connectivity and suitable habitats between riparian woodland habitats along the Gila and Salt rivers.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently

designated. Consequently, some Federal agencies may request conferencing with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). We may also prepare a formal conference report to address the effects on proposed critical habitat from issuance of an incidental take permit, under section 10(a)(1)(B) of the Act.

Activities on Federal lands that may affect the pygmy-owl or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the pygmy-owl is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that riparian vegetation is significantly affected; and

(3) Recreational activities that appreciably degrade vegetation.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920, facsimile 505–248–6922).

Designation of critical habitat could affect Federal agency activities including, but not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies; and

(3) Regulation of grazing, mining, or recreation by the BLM or Forest Service.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an economic analysis for this proposal prior to a final determination.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of pygmy-owls and habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(5) Economic and other values associated with designating critical habitat for the pygmy-owl such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule three public hearings on this proposal. We will announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that

interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the ''Supplementary Information'' section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. Following issuance of this proposed rule, we will prepare an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species. In the economic analysis, we will address any possible inconsistencies with other agencies' actions and any effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues.

2. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis, we will address any effects to small governments resulting from designation of critical habitat and any Federal mandate of $100 million or greater in any year.

5. Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not ''take'' private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

6. Federalism

This proposed rule, if made final, will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists. If our economic analysis reveals that the economic impacts of designating any area of State concern as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor also will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. We have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. This proposed designation of critical habitat, and the resulting final determination, will not require any actions that will affect the environment. No construction or destruction in any form is required under the provisions of critical habitat.

10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' Subsequent to this proposal, we will coordinate with the Tribe and analyze the need to designate critical habitat on Tribal lands. If, as a result of such coordination and analysis, we determine that some Tribal lands should be proposed as critical habitat, we will amend the current proposal or issue a separate proposal.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Author. The primary authors of this notice are Mike Wrigley and Tom Gatz (see **ADDRESSES** section); and Steve Spangle and Ric Riester, Southwest Regional Office, P.O. Box 1306, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for ''Pygmy-owl, cactus ferruginous'' under ''BIRDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Birds							
*	*	*	*		*		*
Pygmy-owl, cactus ferruginous.	*Glaucidium brasilianum cactorum.*	U.S.A. (AZ, TX), Mexico.	AZ	E	600	17.95(b)	NA
*	*	*	*		*		*

3. In § 17.95 add critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)

1. Critical habitat units are depicted for Pima, Cochise, Pinal, and Maricopa counties, Arizona, on the maps below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, and sheltering. The primary constituent elements are found, or could develop, in areas that support, or have the potential to support, riparian forests, riverbottom woodlands, xeroriparian forests, plains and desert grassland, and the Arizona upland subdivision of Sonoran desertscrub (Turner and Brown 1982). Within these vegetative communities, specific plant associations that contain, or could develop, the primary constituent elements include those dominated by cottonwood (*Populus fremontii*), willow (*Salix* spp.), ash (*Fraxinus velutina*), mesquite (*Prosopis velutina*, and *P. glandulosa*), palo verde (*Cercidium* spp.), ironwood (*Olneya tesota), saguaro cactus (Carnegiea giganteus*), organ pipe cactus (*Stenocereus thurberi*), creosote (*Larrea tridentata*), acacia (*Acacia* spp.), and/or hackberry (*Celtis* spp.).

3. Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for cactus ferruginous pygmy-owl issued under section 10(a) of the Act.

Map Unit 1: Pima County, Arizona. From BLM map Sells, Ariz. 1979, Atascosa Mts., Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 17 S., R. 8 E., secs. 1 to 3, E½ sec. 4, E½ sec. 9, secs. 10 to 16, 21 to 36; T. 17 S., R. 9 E., that portion of sec. 1 lying west of St. Hwy 286, secs. 2 to 10, those portions of secs. 11, 12, and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23 and 26 lying west of St. Hwy 286, secs. 27 to 34, that portion of sec. 35 lying west of St. Hwy 286; T. 18 S., R 7 E., sec. 1, those portions of secs. 2 and 11 lying east of Papago Indian Reservation Bdy, sec. 12, those portions of secs. 13, 14, 24, 25, and 36 lying east of Papago Indian Reservation Bdy; T. 18 S., R. 8 E., secs. 1 to 36; T. 18 S., R. 9 E., that portion of sec. 2 lying west of Hwy 286, secs. 3 to 10, those portions of secs. 11 and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23, 26, 27 and 28 lying west and north of St. Hwy 286, secs. 29 to 31, those portions of secs. 32 and 33 lying west and north of St. Hwy 286; T. 19 S., R. 7 E., those portions of secs. 1, 12, 13, 14, and 23 lying east of Papago Indian Reservation Bdy, secs. 24 and 25, those portions of secs. 26, 27, and 34 lying east of Papago Indian Reservation Bdy, secs. 35, 36; T. 19 S., R. 8 E., secs. 1 to 12, N½ sec. 13, secs. 14 to 21, W½ sec. 22, S½ sec. 26, S½ NW¼ sec. 27, secs. 28 to 36; T. 19 S., R. 9 E., sec. 6; T. 20 S., R. 7 E., secs. 1, 2, those portions of secs. 3, 9, and 10 lying east of Papago Indian Reservation Bdy, secs. 11 to 15, those portions of secs. 16, 17, and 21 lying east of Papago Indian Reservation Bdy, secs. 22 to 27, those portions of secs. 28, 29, 32, and 33 lying east of Papago Indian Reservation Bdy, secs. 34 to 36; T. 20 S., R. 8 E., secs. 2 to 11, 14 to 23, 27 to 33; T. 21 S., R. 7 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of Papago Indian Reservation Bdy, secs. 9 to 16, those portions of secs. 17 and 20 lying east of Papago Indian Reservation Bdy, secs. 21 to 27, those portions of secs 28 and 29 lying east of Papago Indian Reservation Bdy, secs. 34 to 36; T. 21 S., R. 8 E., secs. 4 to 9; T. 22 S., R. 7 E., secs. 1 to 3, 10 to 15, 22, 23, 24; T. 22 S., R. 8 E., S½ SW, SW¼ SE¼ sec. 18, W ½ & W ½ E ½ sec. 19, that portion of sec. 20 outside Buenos Aires NWR Bdy, secs. 29, 30.

Map Unit 2: Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977. Gila and Salt Principal Meridian, Arizona: T. 13 S., R. 9 E., secs. 31 to 36; T. 13 S., R. 10 E., secs. 31 to 36; T. 13 S., R. 12 E., those portions of secs. 31 to 34 lying within Tucson Mountain County Park; T. 14 S., R. 9 E., secs. 1 to 12; T. 14 S., R. 10 E., secs. 1 to 12; T. 14 S., R. 11 E., that portion of sec. 1 lying within the Tucson Mountain County Park, secs. 5 to 8, 10, 11, those portions of secs. 12 and 13 lying within Tucson Mountain County Park, sec 14 and 15; T. 14 S., R. 12 E., those portions of secs. 1 to 25 lying within Tucson Mountain County Park; T. 14 S. R. 13 E., those portions of secs. 7, 18, 19, 28, 29, and 30 lying within Tucson Mountain County Park.

Map Unit 3: Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977. Gila and Salt Principal Meridian, Arizona: T. 12 S., R. 12 E., those portions of secs. 8 and 9 lying south and west of Interstate 10, secs. 17, 20, and 29.

Map Unit 4: Pima and Pinal Counties, Arizona. From BLM maps Casa Grande, Ariz. 1979, Silver Bell Mts., Ariz. 1977. Gila and Salt Principal Meridian, Arizona: T. 10 S., R. 11 E., secs. 1 to 36; T. 10 S., R. 12 E., secs. 4 to 9, 16 to 21, 28 to 33; T. 11 S., R. 11 E., secs. 1 to 5, 9 to 15, secs. 23, 24; T. 11 S., R. 12 E., secs. 3 to 10, 14 to 30, N½ sec. 31, secs. 32 to 36; T. 11 S., R. 13 E., secs. 19, 28 to 33; T. 12 S., R. 12 E., secs. 1 to 4, those portions of secs. 8 and 9 lying north and east of Interstate 10, secs. 10 to 14, 23, 24, that portion of sec. 25 lying north of W. Cortaro Farms Road, that portion of sec. 26 lying north of W. Cortaro Farms Road and north and east of Interstate 10; T. 12 S., R. 13 E., secs. 4 to 9, 16 to 21, those portions of secs. 29 and 30 lying north of W. Cortaro Farms Road.

Map Unit 5a: Pinal County, Arizona. From BLM maps Mesa, Ariz. 1979, Casa Grande, Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 5 S., R. 11 E., secs. 1 to 36; T. 6 S., R. 11 E., secs. 1 to 36; T. 7 S., R. 11 E., secs. 1 to 36; T. 8 S., R. 11 E., secs. 1 to 36; T. 9 S., R. 11 E., secs. 1 to 36.

Map Unit 5b: Pinal County, Arizona. From BLM maps Casa Grande, Ariz. 1979, Mammoth, Ariz. 1986. Gila and Salt Principal Meridian, Arizona: T. 8 S., R. 15 E., secs. 1 to 36; T. 9 S., R. 12 E., secs. 1 to 36;

T. 9 S., R. 13 E., secs. 1 to 36; T. 9 S., R. 14 E., secs. 1 to 36; T. 9 S., R. 15 E., secs. 1 to 12, 14 to 21, 28 to 30.

Map Unit 6: Cochise, Pima, and Pinal Counties, Arizona. From BLM maps Mesa, Ariz. 1979, Globe, Ariz. 1986, Mammoth, Ariz. 1986, and Tucson, Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 4 S., R. 9 E., those portions of secs. 1, 12, 13, and 24 lying east of U.S. Hwy 89; T. 4 S., R. 10 E., secs. 1 to 5, that portion of sec. 6 lying east of U.S. Hwy 89, secs. 7 to 24; T. 4 S., R. 11 E., secs. 7 to 36; T. 4 S., R. 12 E., secs. 1 to 12; T. 4 S., R. 13 E., that portion of sec. 1 lying south and west of St. Hwy 177, secs. 2 to 12; T. 4 S., R. 14 E., those portions of secs. 6, 7, 8, 16, and 17 lying south and west of St. Hwy 177, secs. 18, 20, those portions of secs. 21, 22, 26, and 27, lying south and west of St. Hwy 177, secs. 28, 29, 33, and 34, that portion of sec. 35 lying south and west of St. Hwy 177, sec. 36; T. 5 S., R. 14 E., those portions of secs. 1 and 2 lying south and west of St. Hwy 177, secs. 3, 11, 12; T. 5 S., R. 15 E., those portions of secs. 6, 7, 8, 9, and 10 lying south and west of St. Hwy 177, that portion of sec. 14 lying south and west of the Pinal and Gila counties boundary (all within Pinal County), that portion of sec. 15 lying south of St. Hwy 177 and west of the Pinal and Gila counties boundary (all within Pinal County), secs 16 to 22, that portion of sec. 23 lying south and west of the Pinal and Gila counties boundary (all within Pinal County), that portion sec. 24 lying west of St. Hwy 77 and south of Pinal and Gila counties boundary (all within Pinal County), that portion of sec. 25 lying south and west of St. Hwy 77, secs. 26 and 36; T. 5 S., R. 16 E., those portions of secs. 30 and 31 lying south and west of St. Hwy 77; T. 6 S., R. 15 E., sec. 1; T. 6 S., R. 16 E., those portions of secs. 5 and 6 lying south and west of St. Hwy 77, sec. 7, those portions of secs. 8, 9, and 17 lying south and west of St. Hwy 77, secs. 17 and 20, those portions of secs. 21 and 28 lying west of St. Hwy 77, secs. 29 and 32, that portion of sec. 33 lying west of St. Hwy 77; T. 7 S., R. 16 E., that portion of sec. 4 lying west of St. Hwy 77, secs. 5 to 8, those portions of secs. 9, 10, and 15 lying south and west of St. Hwy 77, secs. 16 to 21, those portions of secs. 22, 23, 25, and 26 lying south and west of St. Hwy 77, secs. 27 to 35, that portion of sec. 36 lying south and west of St. Hwy 77; T. 8 S., R. 16 E., that portion of sec. 1 lying south and west of St. Hwy 77, secs. 2 to 12, 15 to 22, 28 to 32; T. 8 S., R. 17 E., that portion of sec. 6 south and west of St. Hwy 77, that portion of section 7 west of St. Hwy 77 and west of River Road, that portion of sec. 17 lying south and west of River Road, that portion of sec. 18 south and west of River Road and north and east of a line defined by Camino Rio Road where it runs southeasterly from the west boundary of sec. 18 to its intersection with St. Hwy 77 then southeasterly along St. Hwy 77 to its intersection with Old State Hwy 77 then along Old State Hwy 77 to its intersection with the south boundary of sec. 18, that portion of sec. 19 lying east of Old State Highway 77, those portions of secs. 20, 28, and 29 lying south and west of River Road, that portion of sec. 30 lying east of Old State Hwy 77 and St. Hwy 77, sec. 32, that portion of sec. 33 lying west of River Road; T. 9 S., R. 16 E., secs. 5 to 8; T. 9 S., R. 17 E., those portions of secs. 3 and 4 lying west of River Road, sec. 9, those portions of secs. 10, 14, and 15 lying west of River Road, NE 1/4 sec. 22, those portions of secs. 23, 24, and 25 west of River Road; T. 9 S., R. 18 E., those portions of secs. 30 and 31 west of River Road; T. 10 S., R. 18 E., those portions of secs. 5, 6, 7, and 8 lying north and east of Redington Road, sec. 9, those portions of secs. 16, 17, and 21 lying north and east of Redington Road, secs. 22 and 27, those portions of secs. 28 and 33 lying east of Redington Road, sec. 34; T. 11 S., R. 18 E., sec. 2, those portions of secs. 3 and 10 lying east of Redington Road, secs. 11 and 14, those portions of secs. 14 and 22 lying east of Redington Road, secs. 23 and 26, that portion of sec. 27 lying east of Redington Road, that portion of sec. 34 lying east of Redington Road and west of Cascabel Road, that portion of sec. 35 lying west of Cascabel Road; T. 12 S., R. 18 E., that portion of sec. 2 west of Cascabel Road, that portion of sec. 3 lying east of Redington Road, those portions of secs. 11, 12, and 13 lying west of Cascabel Road; T. 12 S., R. 19 E., those portions of secs. 19, 29, and 30 lying west of Cascabel Road, sec. 31, that portion of sec. 32 lying west of Cascabel Road; T. 13 S., R. 19 E., that portion of sec. 4 lying west of Cascabel Road, sec. 5, those portions of secs. 9, 10, and 15 lying west of Cascabel Road.

Map Unit 7: Maricopa and Pinal Counties, Arizona. From BLM maps Theodore Roosevelt Lake, Ariz. 1981 and Mesa, Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 3 N., R. 7 E., that portion of sec. 33 lying easterly of Salt River Indian Reservation Bdy, secs. 34 to 36; T. 3 N., R. 8 E., secs. 31 to 33; T. 2 N., R. 7 E., secs. 1 to 3, those portions of secs. 4, 5, 6 and 7 lying south and east of Salt River Indian Reservation Bdy, secs. 8 to 17, that portion of sec. 18 lying south and east Salt River Indian Reservation Bdy, secs. 19 to 25, E ½ sec. 26, E ½ sec. 35, sec. 37; T. 2 N., R. 8 E., secs. 4 to 8, 18, 19, 25 to 36; T. 2 N., R. 9 E., secs. 30, 31; T. 1 N., R. 9 E., secs. 6, 7, 18 to 31, 27 to 30, 34 to 36; T. 1 N., R. 10 E., secs. 31, 32; T. 1 S., R. 9 E., secs. 1 to 3, 10 to 15, 22 to 26, those portions of secs. 27, 35 and 36 lying north and east of U.S. Hwy 60/89; T. 1 S., R. 10 E., secs. 5 to 8, 17 to 20, 29 to 32; T. 2 S., R. 9 E., that portion of sec 1 lying north and east of U.S. Hwy 60/89; T. 2 S., R. 10 E., secs. 1 to 5, those portions of secs. 6, 7 and 8 lying north and east of U.S. Hwy 60/89, secs. 9 to 16, that portion of sec. 17 lying north and east of U.S. Hwy 60/89 and south and east of U.S. Hwy 89, that portion of sec. 20 lying east of U.S. Hwy 89, secs. 21 to 28, those portions of secs. 29 and 32 lying east of U.S. Hwy 89, secs. 33 to 36: T. 3 S., R. 10 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of U.S. Hwy 89, secs. 9 to 16, those portions of secs. 17, 18, and 19 lying east of U.S. Hwy 89, secs. 20 to 29, those portions of secs. 30 and 31 lying east of U.S. Hwy 89, secs. 32 to 36.

Note: Maps follow:

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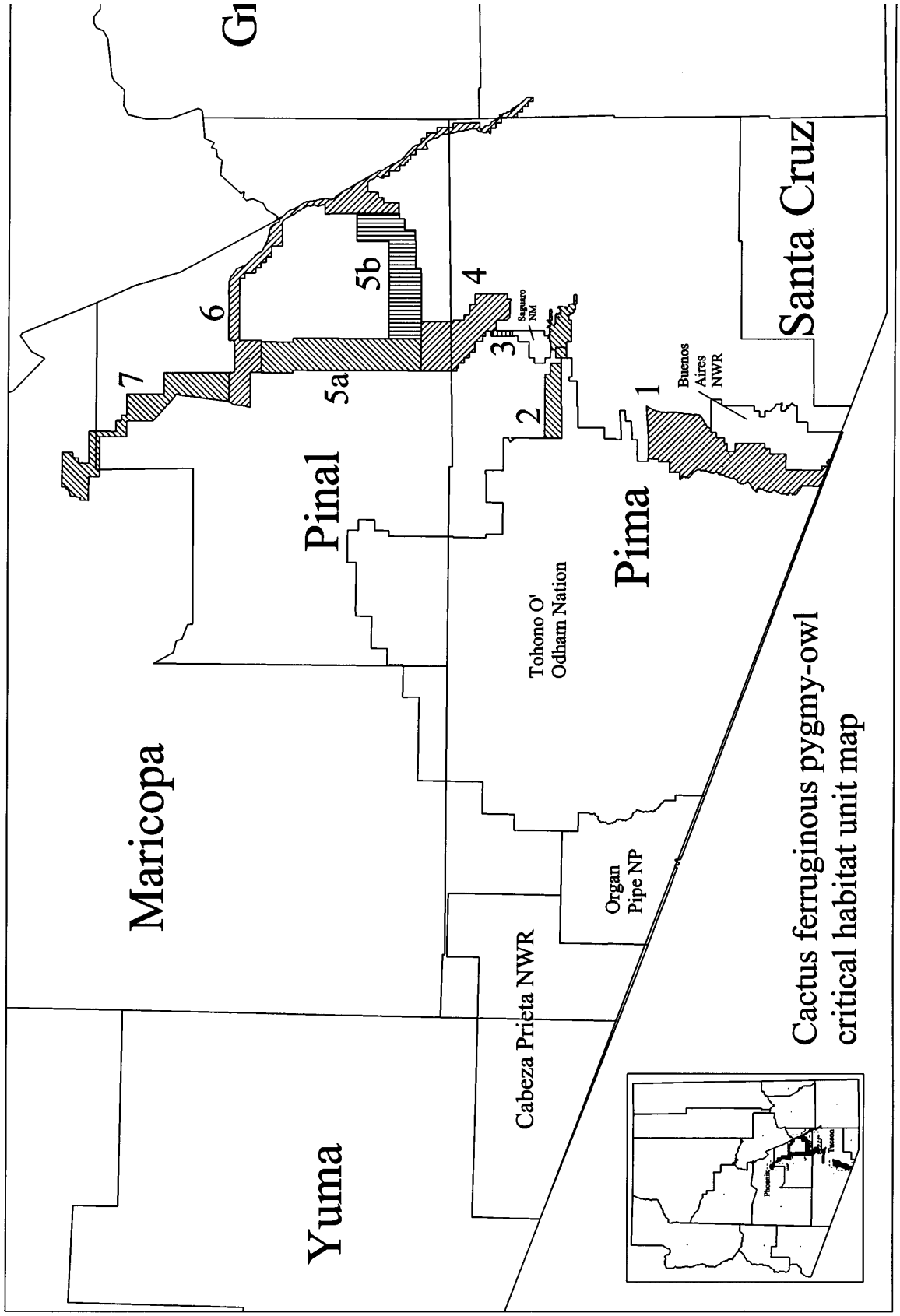
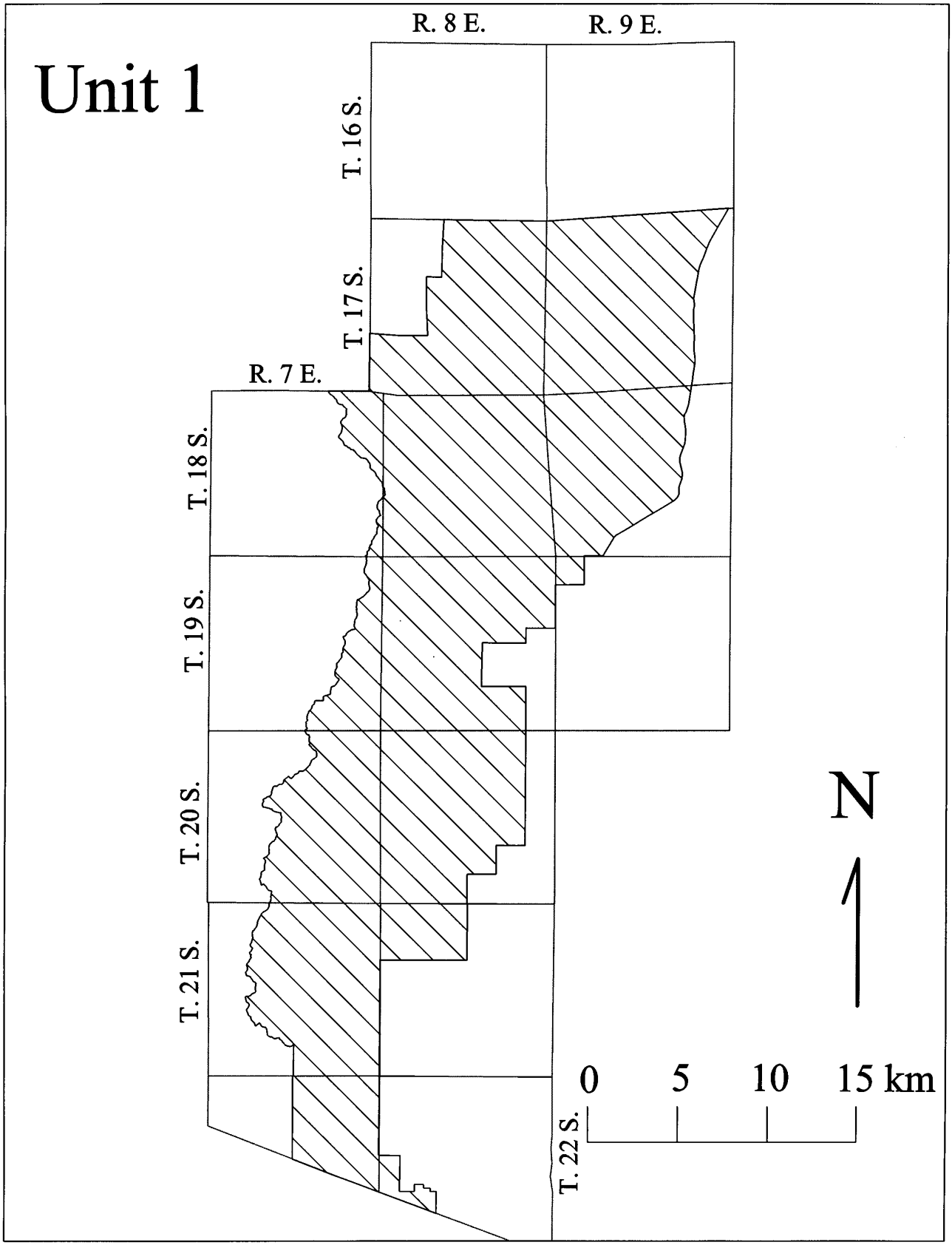

Santa Cruz
Pima
Pinal
Maricopa
Yuma
1
2
3
4
5a
5b
6
7
Buenos Aires NWR
Saguaro NM
Tohono O' Odham Nation
Organ Pipe NP
Cabeza Prieta NWR
Cactus ferruginous pygmy-owl critical habitat unit map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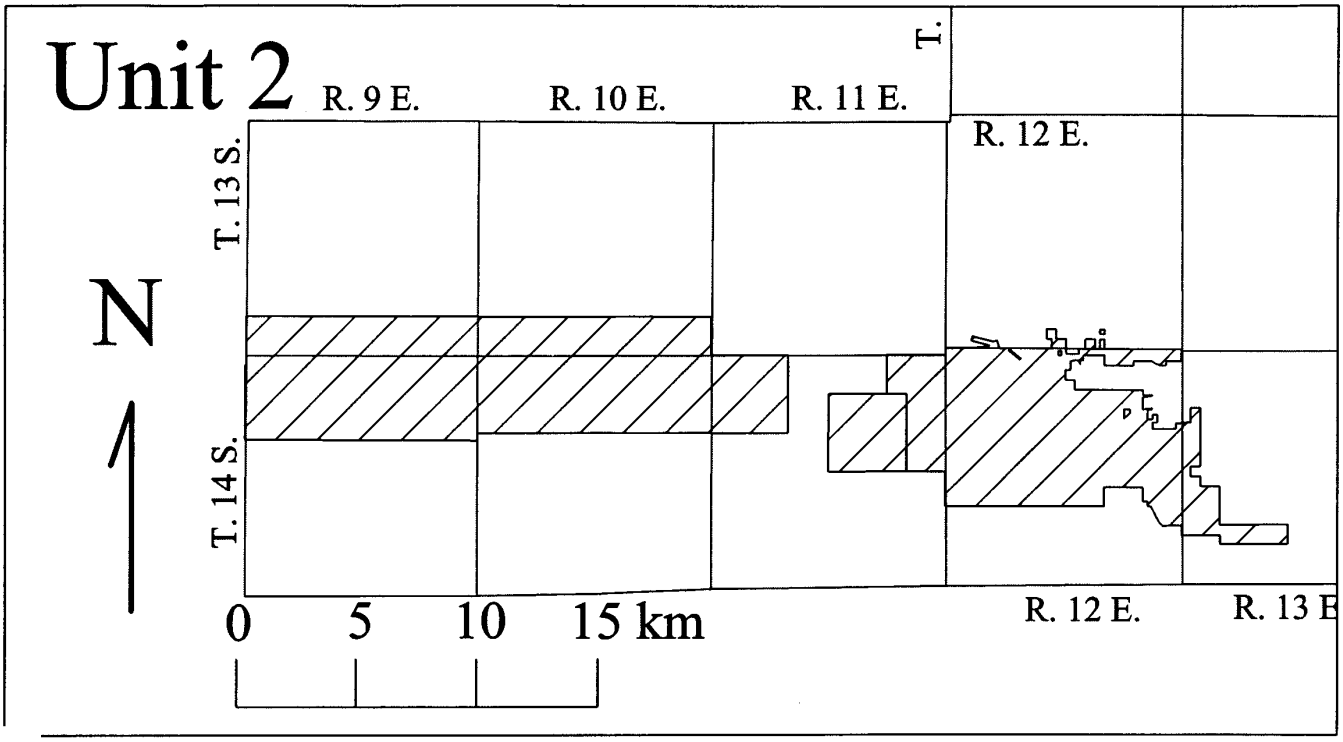
R. 9 E.
R. 7 E.
T. 16 S.
T. 17 S.
T. 18 S.
T. 19 S.
T. 20 S.
T. 21 S.
T. 22 S.
N
0 5 10 15 km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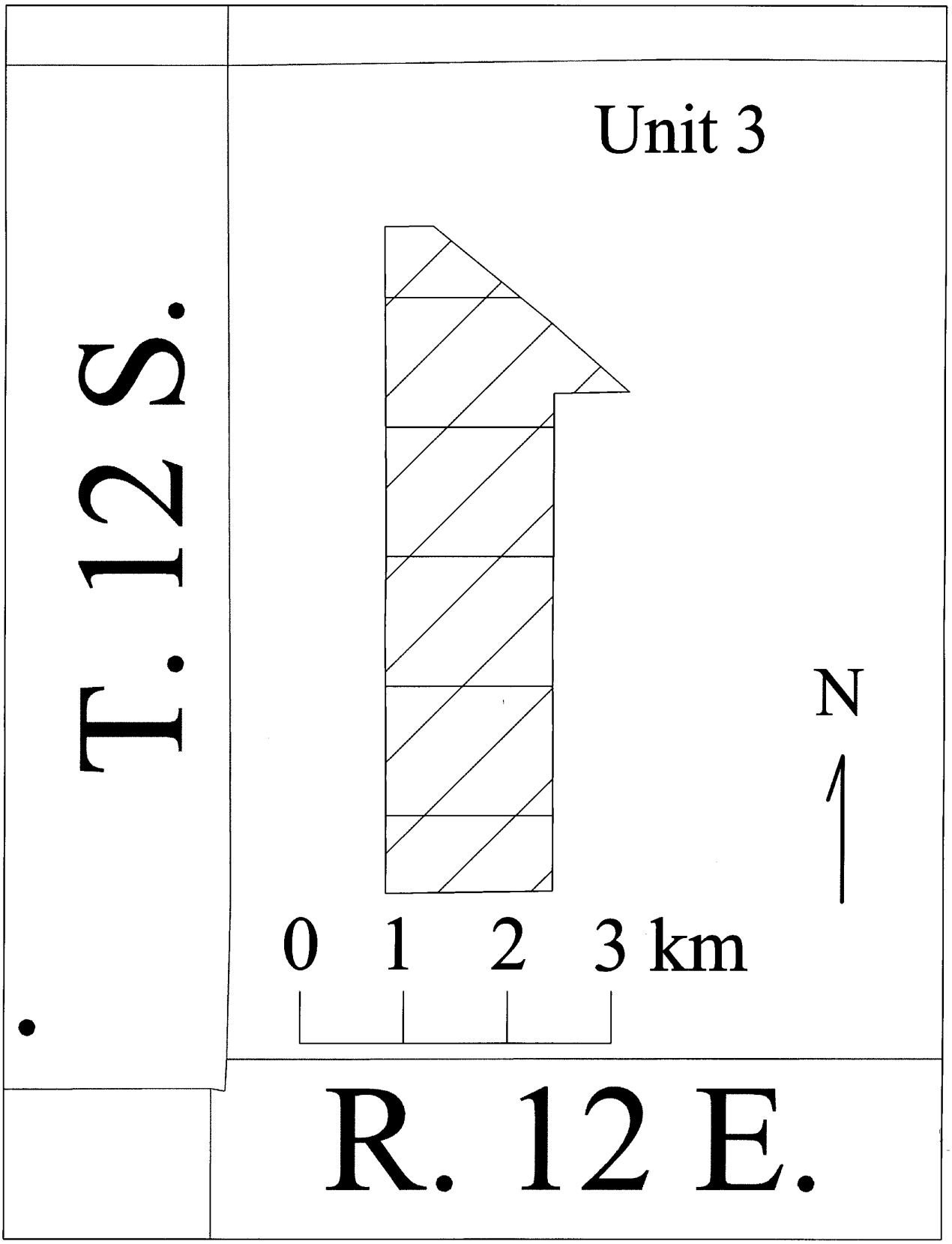
R. 10 E.
R. 11 E.
T.
R. 12 E.
T. 13 S.
N
T. 14 S.
0
5
10
15 km
R. 12 E.
R. 13 E


Unit 3
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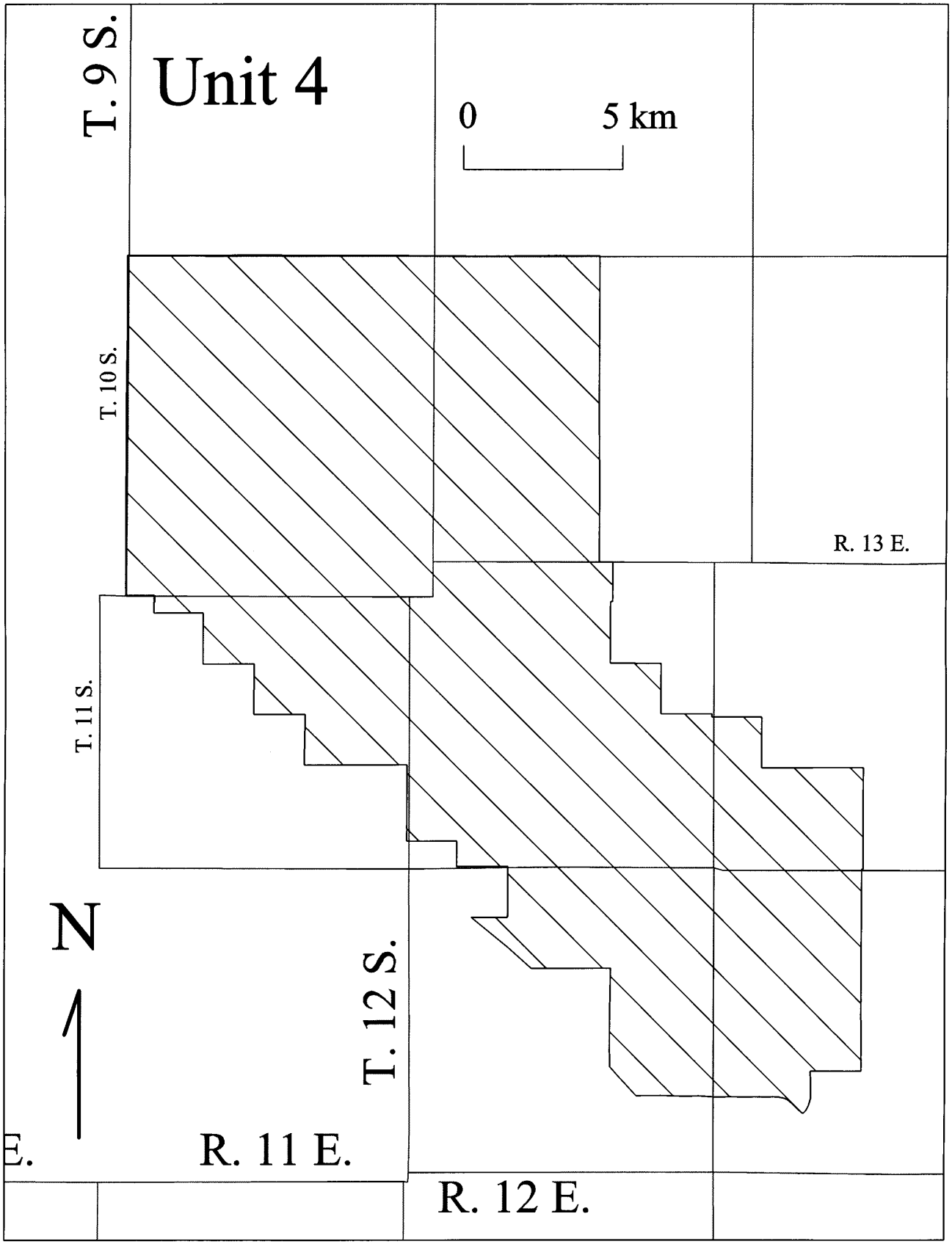
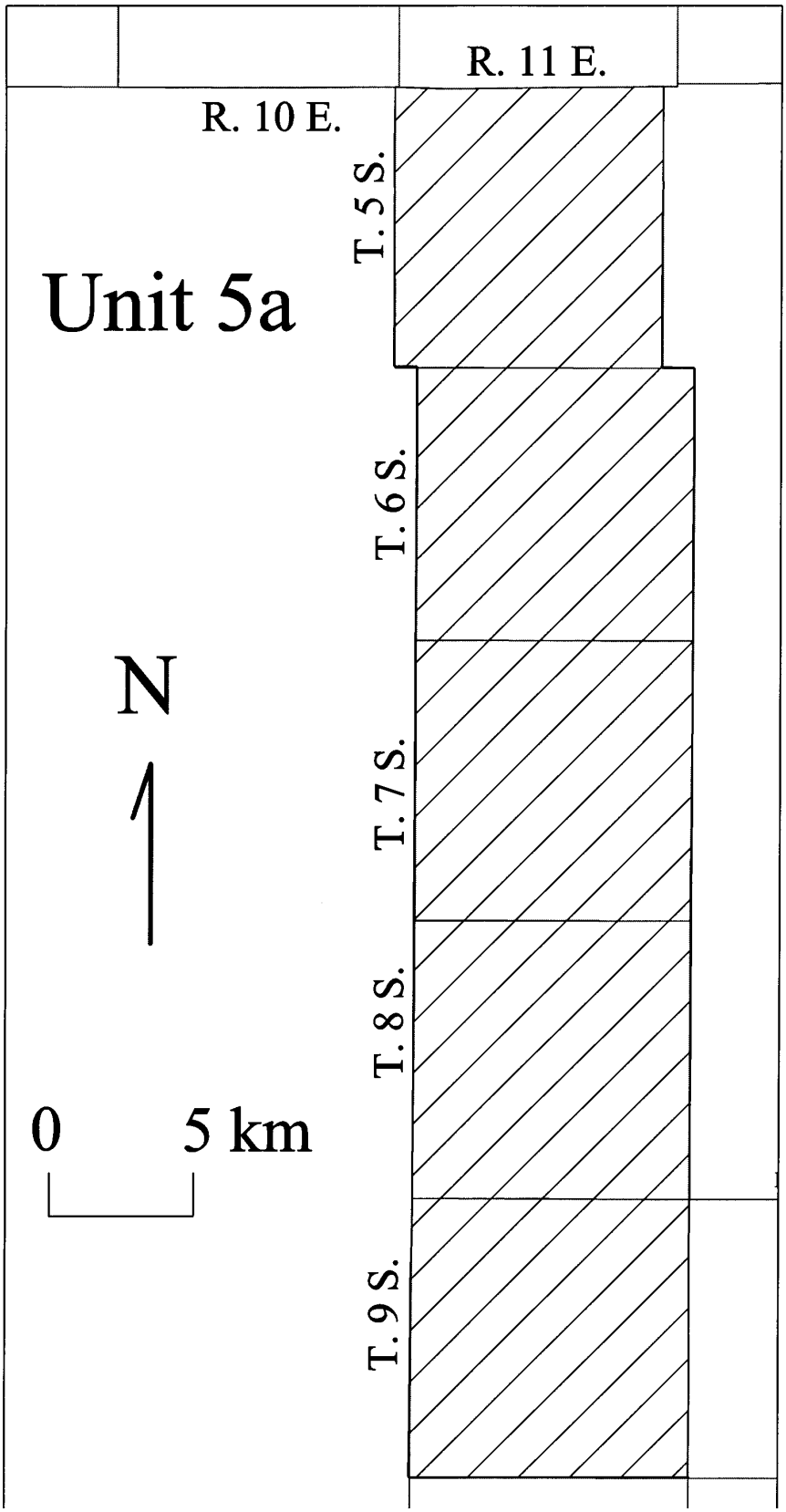
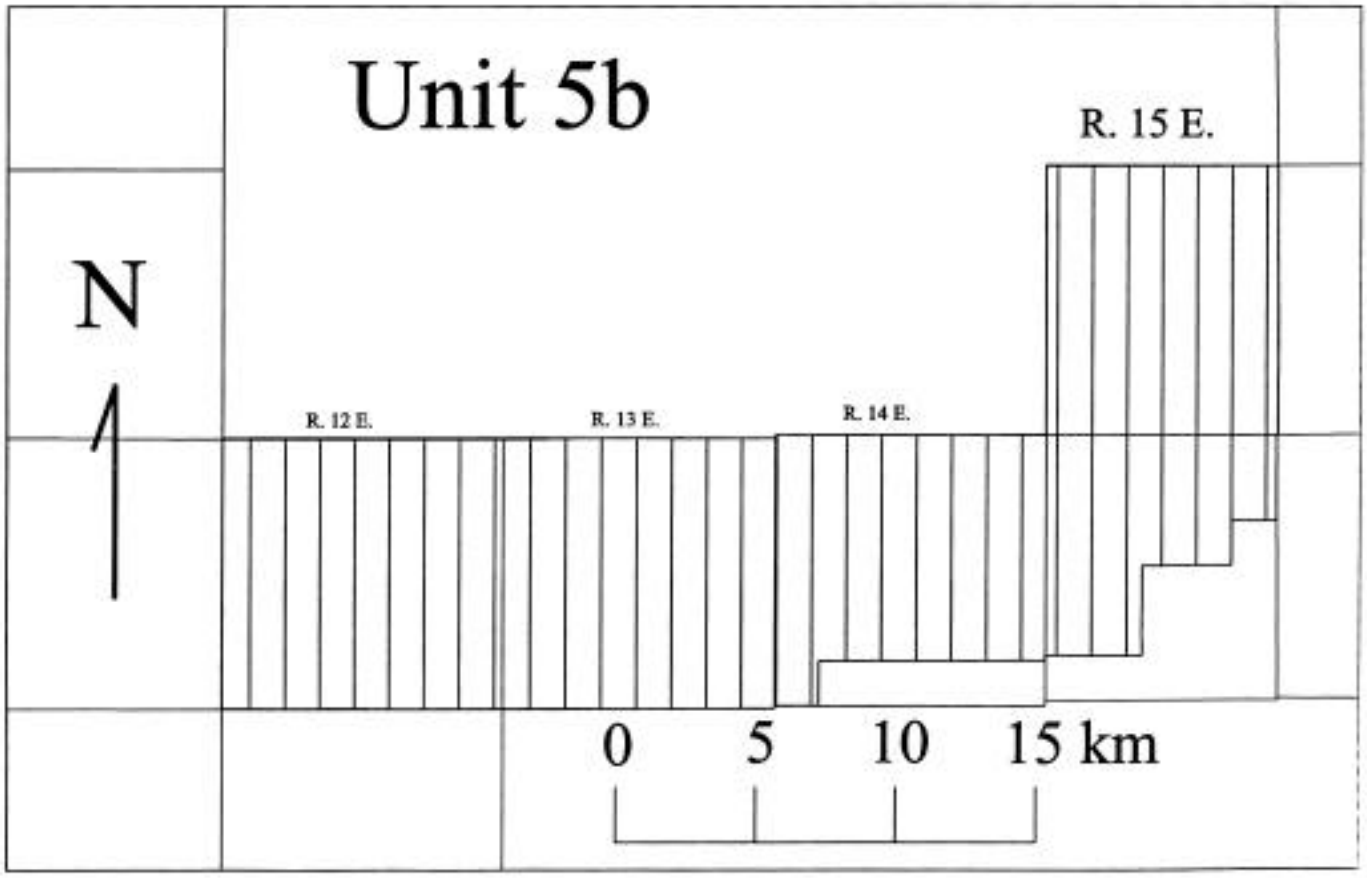
N
0 1 2 3 km
R. 12 E.


T. 9 S.
Unit 4
0
5 km
T. 10 S.
R. 13 E.
T. 11 S.
N
T. 12 S.
E.
R. 11 E.
R. 12 E.


R. 11 E.
R. 10 E.
T. 5 S.
Unit 5a
T. 6 S.
N
T. 7 S.
T. 8 S.
0
5 km
T. 9 S.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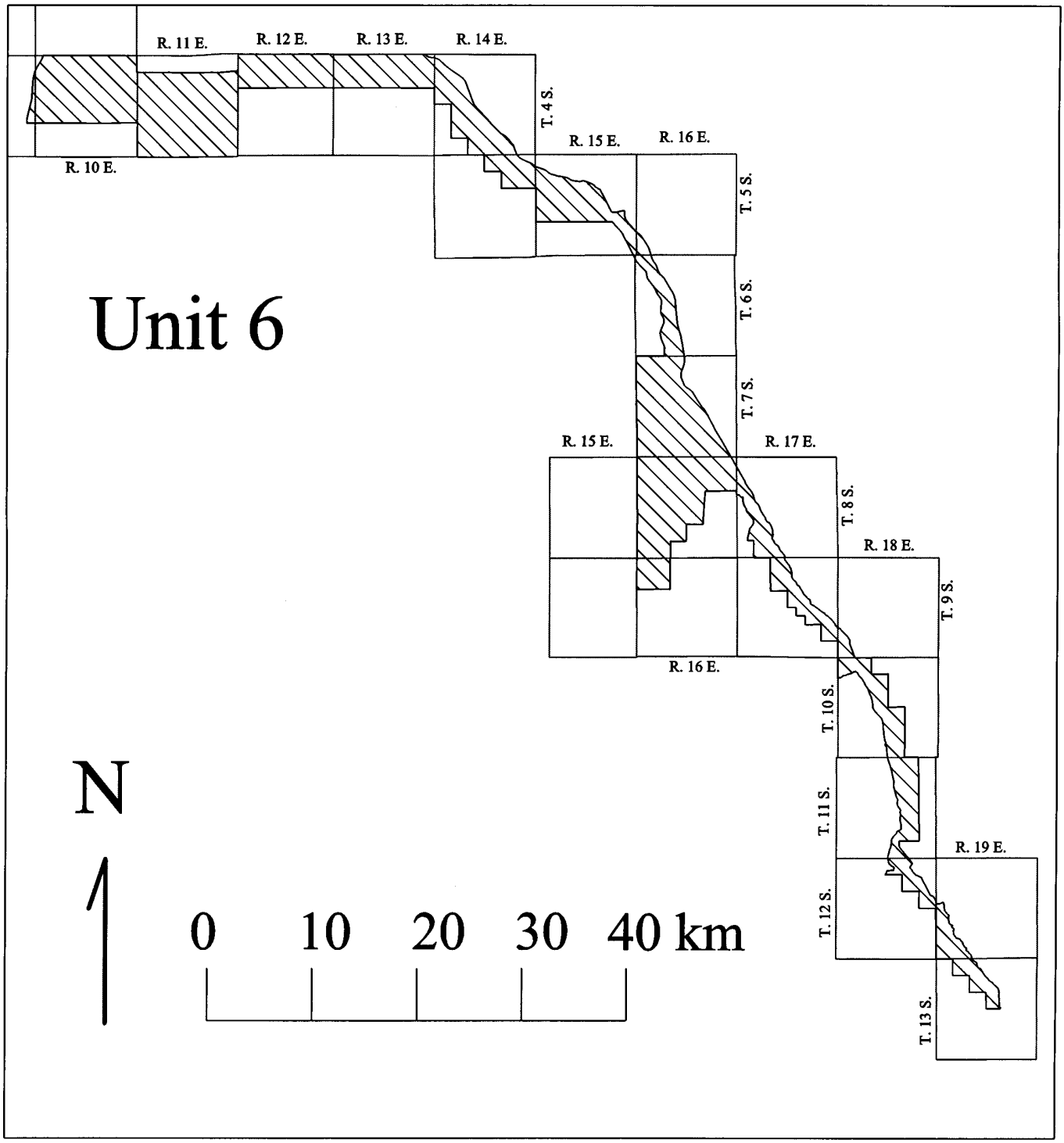
N
R. 12 E.
R. 13 E.
R. 14 E.
0 5 10 15 km


R. 10 E.
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R. 14 E.
R. 15 E.
R. 16 E.
R. 15 E.
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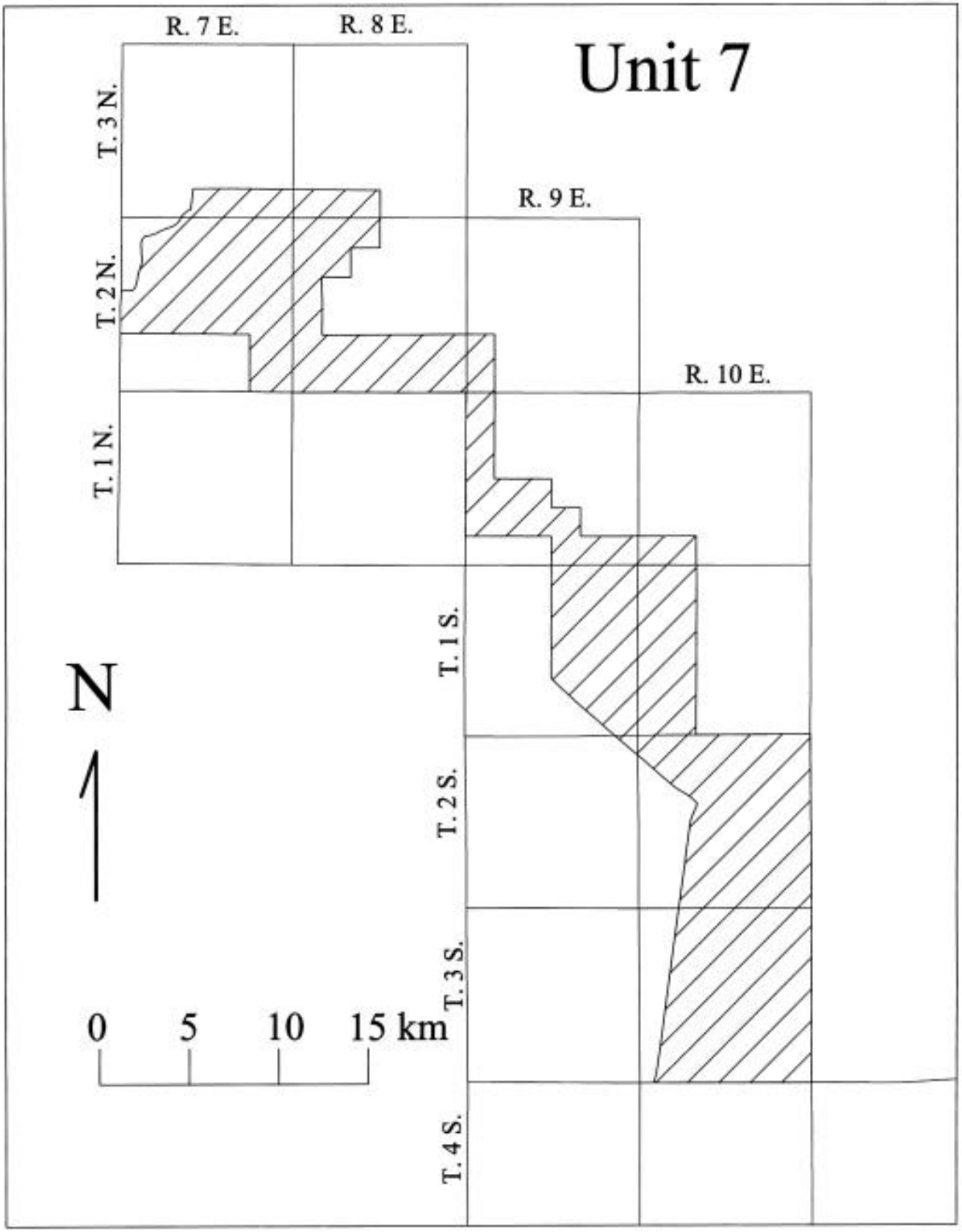
R. 18 E.
R. 16 E.
R. 19 E.
T. 4 S.
T. 5 S.
T. 6 S.
T. 7 S.
T. 8 S.
T. 9 S.
T. 10 S.
T. 11 S.
T. 12 S.
T. 13 S.
Unit 6
N
0 10 20 30 40 km


Unit 7
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R. 8 E.
R. 9 E.
R. 10 E.
T. 3 N.
T. 2 N.
T. 1 N.
T. 1 S.
T. 2 S.
T. 3 S.
T. 4 S.
N
0 5 10 15 km

* * * * *

Dated: December 22, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–34412 Filed 12–23–98; 3:59 pm]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF37

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Huachuca Water Umbel, a Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Lilaeopsis schaffneriana* ssp. *recurva,* the Huachuca water umbel, a plant. Proposed critical habitat includes a total of 83.9 kilometers (52.1 miles) of streams or rivers in Cochise and Santa Cruz counties, Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until March 1, 1999. We will hold a public hearing on this proposed rule; we will publish the date and location of this hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

ADDRESSES: Send comments and materials to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

Lilaeopsis schaffneriana ssp. *recurva* (referred to as *Lilaeopsis* in this proposed rule), the Huachuca water umbel, is a plant found in cienegas (desert marshes), streams and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as *Lilaeopsis* (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982).

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historical times. *Lilaeopsis* occupies small portions of these rare habitats.

Lilaeopsis is an herbaceous, semiaquatic to occasionally fully aquatic perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow-green or bright green leaves are generally 1–3 millimeters (mm) (0.04–0.12 inches (in.)) in diameter and often 3–5 centimeters (cm) (1–2 in.) tall, but can reach up to 20 cm (8 in.) tall under favorable conditions. Three to 10 very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in.) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually through flowering and asexually from rhizomes (root-like stems); the latter probably being the primary reproductive mode. An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants which then may reroot at different sites along streams.

Lilaeopsis schaffneriana spp. *recurva* was first described by A.W. Hill based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found west of the continental divide.

Previous Federal Action

We included *Lilaeopsis schaffneriana* ssp. *recurva,* then under the name *L. recurva,* as a category 2 candidate in our November 28, 1983 (45 FR 82480), and September 27, 1985 (50 FR 39526), plant notices of review. Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. In our February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), notices, we included *Lilaeopsis* as a category 1 candidate. Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On June 3, 1993, we received a petition, dated May 31, 1993, from a coalition of conservation organizations (Suckling *et al.* 1993) to list *Lilaeopsis* and two other species as endangered species pursuant to the Act. On December 14, 1993, we published a notice of 90-day finding that the petition presented substantial information indicating that listing of *Lilaeopsis* may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325).

On April 3, 1995, we published a proposal (60 FR 16836) to list Lilaeopsis and two other species as endangered, and again requested public comments and biological data on their status. After consideration of comments and information received during the comment period, we listed *Lilaeopsis* as endangered on January 6, 1997.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine a species to be endangered or threatened.

At the time of listing, we determined that any potential benefits of critical habitat beyond that of listing, when weighed against the negative impacts of disclosing site-specific localities, did not yield an overall benefit to the species, and, therefore, that designation of critical habitat was not prudent.

On October 31, 1997, Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Department of Interior for failure to designate critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) and *Lilaeopsis* (Southwest Center for Biological Diversity v. Bruce Babbitt, Secretary of the Department of the Interior; CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating that ''There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available.''

On November 25, 1998, in response to the Plaintiff's motion to clarify his initial order, Judge Marquez further ordered ''that within 30 days of the date of this Order, the Secretary shall issue the Proposed Rules for designating critical habitat for the pygmy-owl and water umbel . . . and that within six months of issuing the Proposed Rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel.''

Absent the court's order, the processing of this proposed rule would not conform with our Fiscal Year 1998 and 1999 Listing Priority Guidance, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. The Service's Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of *Lilaeopsis* include a riparian plant community that is stable over time and relatively free of nonnative species, a stream channel that is stable and subject to periodic flooding, refugial sites (sites safe from catastrophic flooding), and a permanently wetted substrate (soil) for growth and reproduction of the plant.

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, Lilaeopsis occurs in microsites (small isolated sites) where competition between different plant species is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. The types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz Rivers when channel entrenchment occurred in the late 1800s. Habitat on the upper San Pedro River is recovering, and *Lilaeopsis* has recently recolonized small reaches of the main channel.

Lilaeopsis can occur in backwaters and side channels of streams and rivers, and in nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again co-dominant with *Rorippa nasturtium-aquaticum* (watercress) (Warren *et al.* 1991).

The expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of ''refugia'' where the species can escape the effects of scouring floods, a watershed that has an unaltered flow regime, and a healthy riparian community that stabilizes the channel. Two patches of *Lilaeopsis* on the San Pedro River were lost during a winter flood in 1994 and the species had still not recolonized that area as of May of 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, *in litt.* 1995).

Density of *Lilaeopsis* plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500.5 square-meter (sq-m) (5,385 square-foot (sq-ft)) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 sq-m (11–22 sq-ft). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger *Lilaeopsis* populations, occupying about 57 percent of the 1,450-m (4,756-ft) perennial reach (Gori *et al.* 1990; Jim Abbott, Coronado National Forest, *in litt.* 1994).

While the extent of occupied habitat can be estimated, the number of individuals in each population is difficult to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A ''population'' of *Lilaeopsis* may be composed of one or many genetically distinct individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino National Wildlife Refuge (Refuge) appears to be successful (Warren 1991). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other Refuge wetlands. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (Kevin Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1994; and Peter Warren, Arizona Nature Conservancy, pers. comm. 1993) that other species such as Typha sp. will out-compete *Lilaeopsis*.

Lilaeopsis has been documented from 25 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991). The plant has been extirpated from six of the sites. The 19 extant sites occur in 4 major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148–2,133 m (3,500–6,500 ft) elevation. New information received during the comment periods and in section 7

conferences and consultations for proposed Federal actions has indicated that some of these sites are larger in extent than previously known. This is likely due to the dynamic nature of riparian habitats.

Nine *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, the Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management's (BLM) Tucson Field Office. Two extirpated populations in the upper San Pedro watershed occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone. Surveys conducted for wildlife habitat assessment have found several discontinuous clumps of *Lilaeopsis* within the upper San Pedro River where habitat was present in 1996 prior to recent flooding (Mark Fredlake, BLM, pers. comm. 1996).

The four *Lilaeopsis* populations in the Santa Cruz watershed probably represent very small remnants of larger populations that may have occurred in the extensive riparian and aquatic habitat formerly existing along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem is about a 130-kilometer (km) (80-mile (mi)) reach that flowed perennially from the Tubac area south to the United States/Mexico border and intermittently from Tubac north to the Tucson area (Davis 1986).

Davis, Jr. (1982) quotes from the July 1855, descriptive journal entry of Julius Froebel while camped on the Santa Cruz River near Tucson: ''* * * rapid brook, clear as crystal, and full of aquatic plants, fish, and tortoises of various kinds, flowed through a small meadow covered with shrubs. * * *.'' This habitat and species assemblage no longer occurs in the Tucson area. In the upper watershed of the middle Santa Cruz River, the species is now represented only by a single population in two short reaches of Sonoita Creek. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat exists (Warren *at el.* 1991).

Lilaeopsis remains in small areas (generally less than 1 sq-m (10.8 sq-ft)) in Black Draw, Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds. Recent renovation of House Pond on private land near Black Draw extirpated the population on that pond.

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Tom Deecken, Coronado National Forest, pers. comm. 1994). A population in the Rio San Bernardino in Sonora was also recently extirpated (Gori *et al.* 1990). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Section 4(b)(2) of the Act requires us to base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could develop the essential habitat features (primary constituent elements), described below, and that are essential for the conservation of a listed species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act prohibits Federal agencies from funding, authorizing, or carrying out actions likely to jeopardize the continued existence of a threatened or endangered species, or that are likely to destroy or adversely modify critical habitat. ''Jeopardize the continued existence'' is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' of critical habitat occurs when a Federal action significantly reduces the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are similar.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain all of the primary constituent elements but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Section 3(5)(C) of the Act generally requires that not all areas potentially occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the

conservation of the species. Areas that contain one or more of the primary constituent elements, but that are not included within critical habitat boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, air, light, minerals or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for *Lilaeopsis* include, but are not limited to, the habitat components that provide:

(1) Sufficient perennial base flows to provide a permanently wetted substrate for growth and reproduction of *Lilaeopsis*;

(2) A stream channel that is stable and subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion;

(3) A riparian plant community that is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and

(4) Refugial sites in each watershed and in each stream reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic floods and recolonize larger areas.

We selected critical habitat areas to provide for the conservation of *Lilaeopsis* throughout the remaining portion of its geographic range in the United States. At least one segment of critical habitat is proposed in each watershed containing the species, with the exception of the Rio Yaqui watershed where the plants are found on the San Bernardino National Wildlife Refuge. That population is secure under current management and, therefore, does not require special management considerations or protection.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below, combined with protected areas either known or suspected to contain some of the primary constituent elements but not proposed as critical habitat, constitute our best assessment at this time of the areas needed for the species' conservation. However, the Arizona Plant Recovery Team will be providing guidance on the recovery planning for this species and may provide additional guidance regarding the significance of areas proposed for critical habitat as well as additional areas not yet proposed. Upon the team's completion of recovery planning guidance, we will evaluate the recommendations and reexamine if and where critical habitat is appropriate.

Critical habitat being proposed for *Lilaeopsis* includes areas that currently sustain the species and areas that do not currently sustain the species but offer recovery habitat. Protection of this proposed critical habitat would be essential for the conservation of the species. The species is already extirpated from a significant portion of its historical range. Eight disjunct areas are being proposed as critical habitat; all proposed areas are in Santa Cruz and Cochise counties, Arizona, and include stream courses and adjacent areas out to the beginning of upland vegetation.

The following general areas are proposed as critical habitat (see legal descriptions for exact critical habitat boundaries): approximately 2.0 km (1.25 mi) of Sonoita Creek southwest of Sonoita; approximately 4.4 km (2.7 mi) of the Santa Cruz River on both sides of Forest Road 61, plus approximately 3 km (1.9 mi) of an unnamed tributary to the east of the river; approximately 5.4 km (3.4 mi) of Scotia Canyon upstream from near Forest Road 48; approximately 1.1 km (0.7 mi) of Sunnyside Canyon near Forest Road 117 in the Huachuca Mountains; approximately 6.1 km (3.8 mi) of Garden Canyon near its confluence with Sawmill Canyon; approximately 3.5 km (2.2 mi) at Lone Mountain Canyon, plus approximately 1.7 km (1.0 mi) of an unnamed tributary and 1.8 km (1.1 mi) of Bear Creek; an approximate 0.7-km (0.4-mi) reach of Joaquin Canyon; and approximately 54.2 km (33.7 mi) of the San Pedro River from the perennial flows reach north of Fairbank (1991 DWR) to 200 m south of Hereford, San Pedro Riparian National Conservation Area.

Although the majority of the land being proposed for critical habitat designation is under Federal administration and management, some riparian systems on private land are being proposed. The Sonoita Creek segment and the San Rafael Valley segment within the Santa Cruz River drainage are privately owned. The sites in the Huachuca Mountains (Scotia, Sunnyside, Bear, Joaquin and a tributary of Lone Mountain, canyons) are managed by the Coronado National Forest. The San Pedro Riparian National Conservation Area is managed by the BLM. The Garden Canyon segment is managed by the Fort Huachuca Military Reservation.

We are not proposing critical habitat for the four populations occurring in Mexico because areas outside the United States are not considered for critical habitat designation (50 CFR 424.12(h)). Also, a population occurring on Turkey Creek, Canelo Hills is small and the habitat is probably not capable of supporting a large population. Similarly, the spring sites of Sawmill Spring, Sycamore Spring, Mud Spring and Freeman Springs also are too small to support large stable populations. We believe these isolated sites are not essential to the conservation of the species and, therefore, are not including them in proposed critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action

that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Consequently, some Federal agencies may request conference with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Lilaeopsis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Lilaeopsis* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Such activities may include but are not limited to:

(1) Activities such as damming, water diversion, channelization, excess groundwater pumping, or other actions that appreciably decrease base flow and appreciably reduce the wetted surface area of perennial rivers or springs;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural flooding regimes needed to maintain natural, dynamic riparian communities. Such activities adverse to *Lilaeopsis* could include, but are not limited to, vegetation manipulation such as chaining or harvesting timber; maintaining an unnatural fire regime either through fire suppression or too frequent or poorly-timed prescribed fires; mining; military maneuvers including bombing and tank operations; residential and commercial development, including road building; and livestock overgrazing;

(3) Activities that appreciably degrade or destroy native riparian communities, including but not limited to livestock overgrazing, clearing, cutting of live trees, introducing or encouraging the spread of nonnative species, and heavy recreational use; and

(4) Activities that appreciably alter stream channel morphology such as sand and gravel mining, road construction, channelization, impoundment, overgrazing by livestock, watershed disturbances, off-road vehicle use, heavy or poorly planned recreational use, and other uses.

Designation of critical habitat could affect the following agencies and/or actions including, but not limited to, managing recreation, road construction, livestock grazing, granting rights-of-way, timber harvesting, and other actions funded, authorized, or carried out by the Forest Service or BLM. Permitting of some military activities on Fort Huachuca may be affected by designation. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920, facsimile (505) 248–6922).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat. We cannot exclude such areas from critical habitat if such exclusion would result in the extinction of the species concerned. We will conduct an economic analysis for this proposal prior to a final determination.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Lilaeopsis* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Lilaeopsis* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send to these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule one public hearing regarding this proposal. We will announce the date, time and place of that hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

Executive Order 12866

Executive order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the ''Supplementary Information'' section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. Following issuance of this proposed rule, we will prepare an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species. In the economic analysis, we will address any possible inconsistencies with other agencies' actions and any effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues.

2. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis, we will address any effects to small governments resulting from designation of critical habitat and any Federal mandate of $100 million or greater in any year.

5. Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not ''take'' private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

6. Federalism

This proposed rule, if made final, will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists. If our economic analysis reveals that the economic impacts of designating any area of State concern as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor also will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

8. Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. We have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. This proposed designation of critical habitat, and the resulting final determination, will not require any actions that will affect the environment. No construction or destruction in any form is required under the provisions of critical habitat.

10. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' The proposed designation of critical habitat for the water umbel does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors. The primary authors of this notice are Jim Rorabaugh and Angela Brooks (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entry for ''*Lilaeopsis schaffneriana ssp. recurva*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		
Lilaeopsis schaffneriana ssp. *recurva*.	Huachuca water umbel.	U.S.A. (AZ), Mexico	Apiaceae	E	600	17.96(a)	NA
*	*	*	*	*	*		

3. In § 17.96 add critical habitat for *Lilaeopsis schaffneriana ssp. recurva*, Huachuca water umbel, as the first entry under paragraph (a) to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

Family Apiaceae: *Lilaeopsis schaffneriana* ssp. *recurva* (Huachuca water umbel)

1. Critical habitat units are depicted for Santa Cruz and Cochise counties, Arizona, on the maps below.

2. Critical habitat includes the stream courses identified on the maps below and adjacent areas out to the beginning of upland vegetation.

3. Within these areas, the primary constituent elements include, but are not limited to, the habitat components which provide—(1) Sufficient perennial base flows to provide a permanently wetted substrate for growth and reproduction of *Lilaeopsis schaffneriana* ssp. *recurva*; (2) A stream channel that is stable and subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion; (3) A riparian plant community that is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and (4) Refugial sites in each watershed and in each stream reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic events and recolonize larger areas.

Map Unit 1. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Sonoita, Arizona. Gila and Salt Principal Meridian, Arizona: T. 20 S., R. 16 E., beginning at a point on Sonoita Creek in sec. 34 at approx. 31° 39′ 19″ N latitude and 110° 41′ 52″ W longitude proceeding downstream (westerly) to a point in sec. 33 at approx. 31° 39′ 07″ N latitude and 110° 42′ 46″ W longitude covering approx. 2 km (1.25 mi.).

Map Unit 2. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Lochiel, Arizona. That portion of the Santa Cruz River beginning in the San Rafael De La Zanja Grant approx. at 31° 22′ 30″ N latitude and 110° 35′ 45″ W longitude downstream (southerly) to Gila and Salt Principal Meridian, Arizona, T. 24 S., R. 17 E., through secs. 11 and 14, to the south boundary of sec. 14 covering approx. 4.4 km (2.7 mi.). Also, a tributary that begins in T. 24 S., R. 17 E., sec. 13 at approx. 31° 21′ 10″ N latitude and 110° 34′ 16″ W longitude downstream (southwesterly) to its confluence with the Santa Cruz River covering approx. 3 km (1.9 mi.).

Map Unit 3. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona. Gila and Salt Principal Meridian, Arizona: That portion of Scotia Canyon beginning in T. 23 S., R. 19 E., sec. 3 at approx. 31° 27′ 19″ N latitude and 110° 23′ 44″ W longitude downstream (southwesterly) through secs. 10, 9, 16 and to approx. 31° 25′ 22″ N latitude and 110° 25′ 22″ W longitude in sec. 21 covering approx. 5.4 km (3.4 mi.).

Map Unit 4. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona. Gila and Salt Principal Meridian, Arizona: That portion of Sunnyside Canyon beginning in T. 23 S., R. 19 E., on the east boundary of sec. 10 downstream (southwesterly) to the south boundary of sec. 10 covering approx. 1.1 km (0.7 mi.).

Map Unit 5. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona. That portion of Garden Canyon in the Fort Huachuca Military Reservation beginning at approx. 31° 27′ 13″ N latitude and 110° 22′ 33″ W longitude downstream (northwesterly) to approx. 31° 28′ 45″ N latitude and 110° 20′ 11″ W longitude covering approx. 6.1 km (3.8 mi.).

Map Unit 6. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona. Gila and Salt Principal Meridian, Arizona: That portion of Lone Mountain Canyon beginning at a point in T. 23 S., R. 19 E., sec. 25 at approx. 31° 24′ 13″ N latitude and 110° 21′ 54″ W longitude downstream south through sec. 36 to a point in T. 24 S.,

R. 19 E., sec. 1 at approx. 31° 22′ 30″ N latitude and 110°21′ 47″ W longitude covering approx. 3.5 km (2.2 mi.). Also, an unnamed tributary beginning at a point in T. 23 S., R. 19 E., sec. 25 at approx. 31° 24′ 08″ N latitude and 110° 21′ 32″ W longitude downstream (southwesterly) to its confluence with Lone Mountain Canyon covering approx. 1.7 km (1.0 mi.). Also, that portion of Bear Creek beginning at a point in T. 23 S., R. 20 E., sec. 30 at approx. 31° 23′ 44″ N latitude and 110° 21′ 14″ W longitude downstream (southerly) through sec. 31, and T. 23 S., R. 19 E., sec. 36 to its confluence with Lone Mountain Canyon covering approx. 1.8 km (1.1 mi.).

Map Unit 7. Cochise County, Arizona. From USGS 7.5′ quadrangle maps Montezuma Pass, Arizona, Campini Mesa, Arizona. Gila and Salt Principal Meridian, Arizona: that portion of Joaquin Canyon beginning at a point in T. 24 S., R. 19 E., sec. 14 at approx. 31° 20′ 53″ N latitude and 110° 22′ 40″ W longitude downstream (southwesterly) to a point in sec. 13 at approx. 31° 20′ 37″ N latitude and 110° 22′ 27″ W longitude covering approx. 0.7 km (0.4 mi.).

Map Unit 8. Cochise County, Arizona. From USGS 7.5′ quadrangle maps: Hereford, Ariz.; Tombstone SE, Ariz.; Nicksville, Ariz.; Lewis Springs, Ariz.; Fairbank, Ariz.; Land, Ariz. Gila and Salt Principal Meridian, Arizona: That portion of the San Pedro River beginning in the San Rafael Del Valle Grant at a point approx. 200 meters upstream (south) of the Hereford Road bridge at approx. 31°26′ 16″ N latitude and 110° 06′ 24″ W longitude continuing downstream (northerly) through the San Rafael Del Valle Grant; T. 21 S., R. 22 E.; T. 21 S., R 21 S.; through the San Juan De Las Boquilla y Nogales Grant to a point at approx. 31° 48′ 28″ N latitude and 110° 12′ 32″ W longitude covering approx. 54.2 km (33.7 mi.).

Note: Maps follow:

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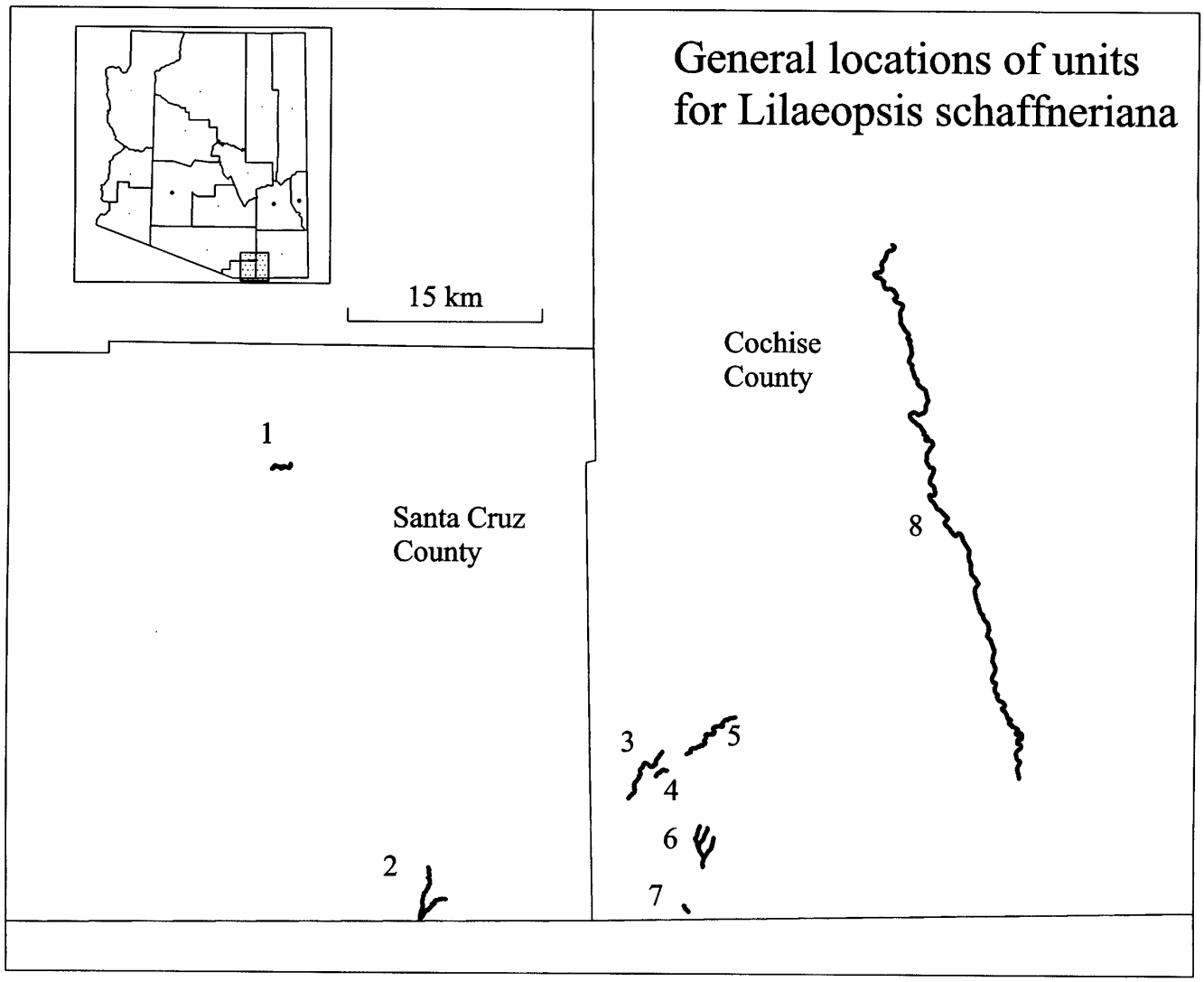
General locations of units
for Lilaeopsis schaffneriana
15 km
Cochise
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1
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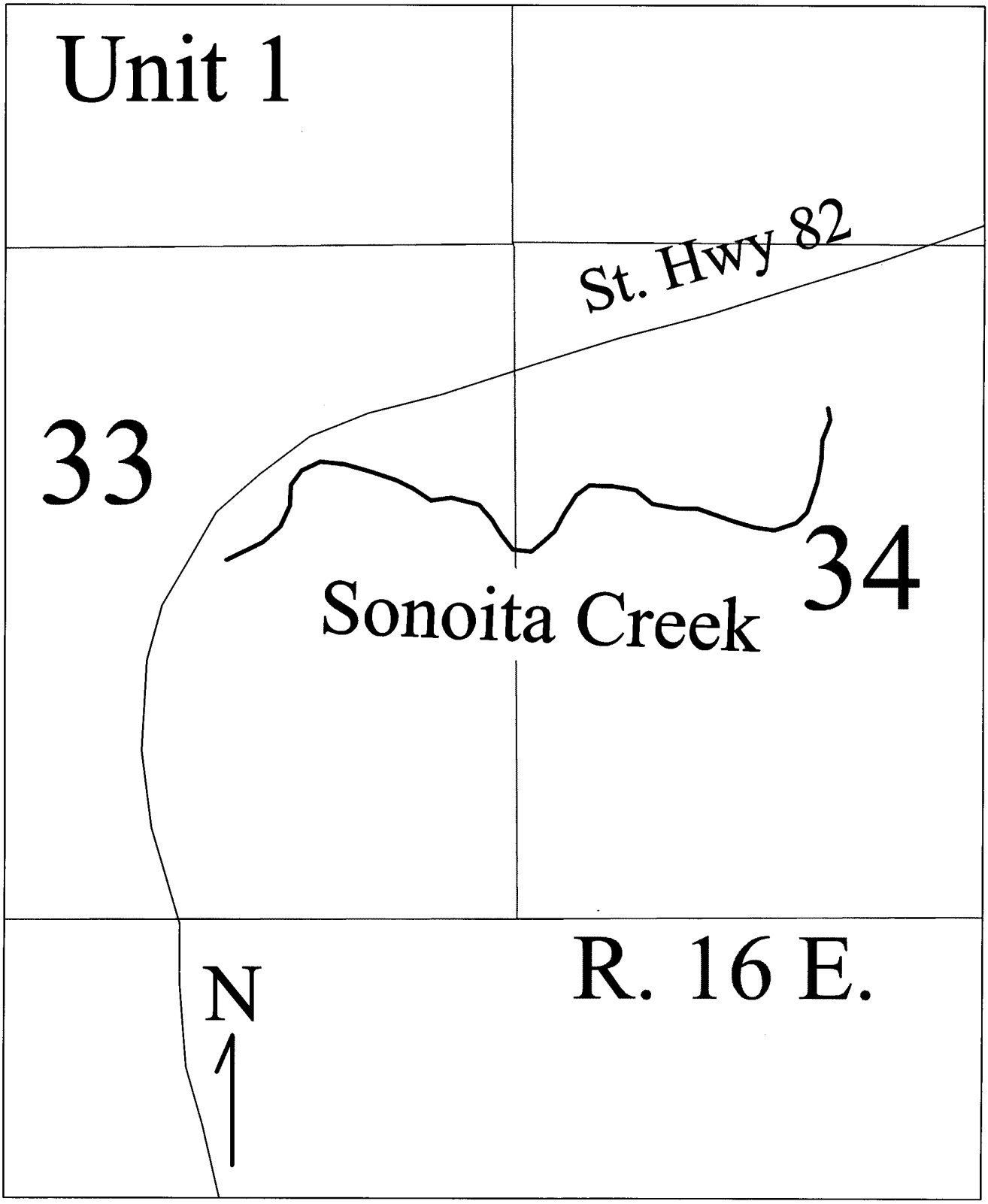
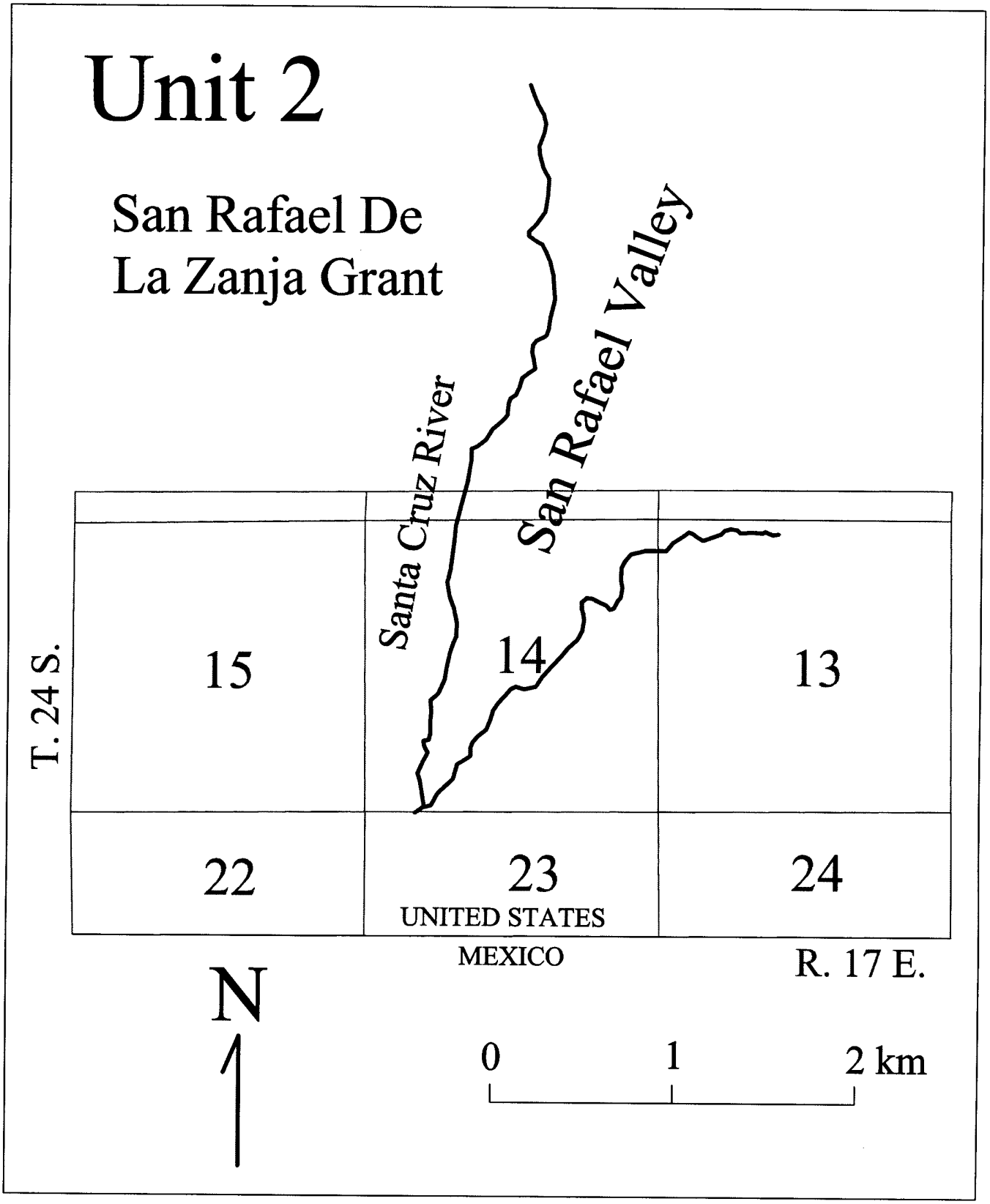
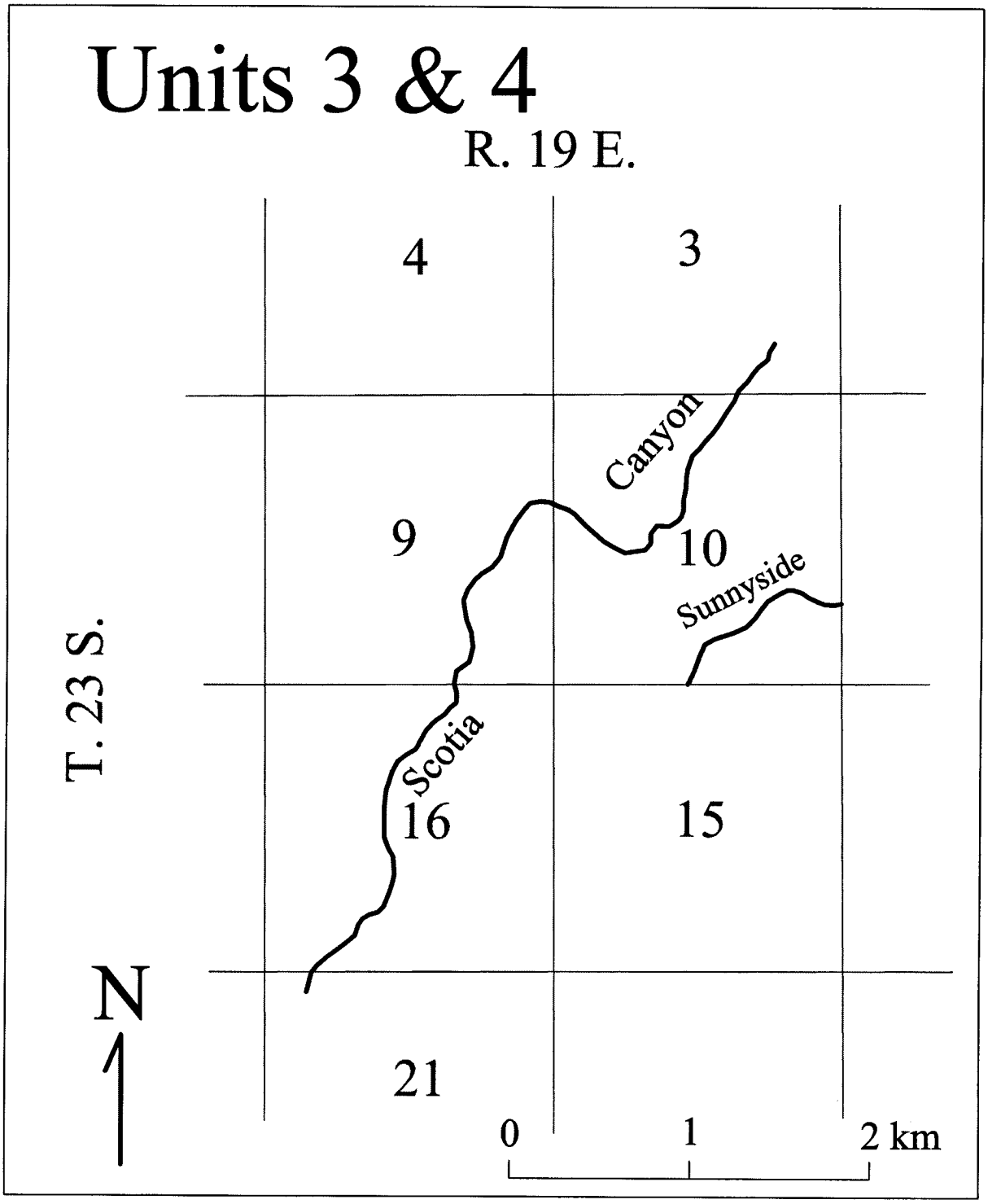
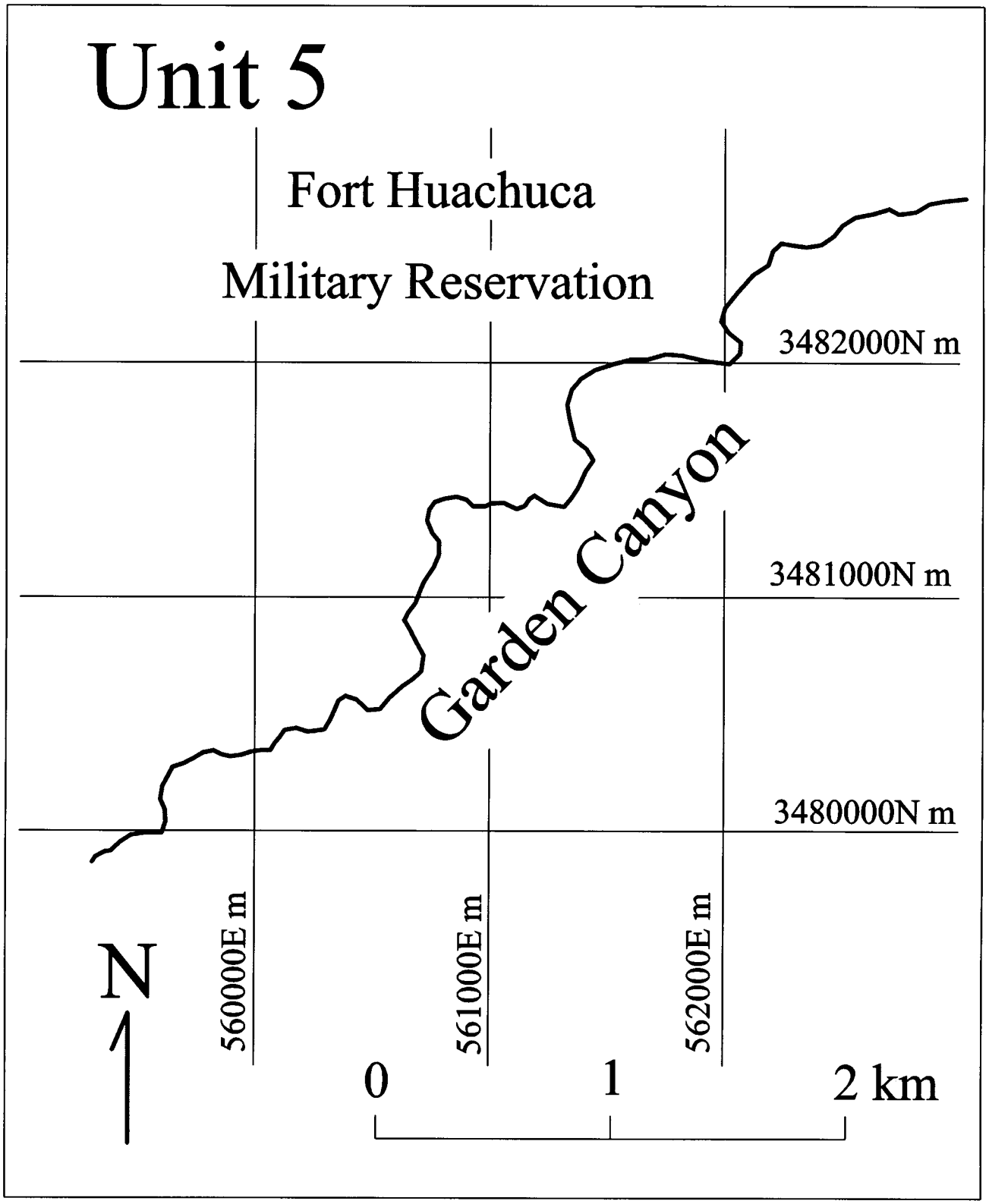
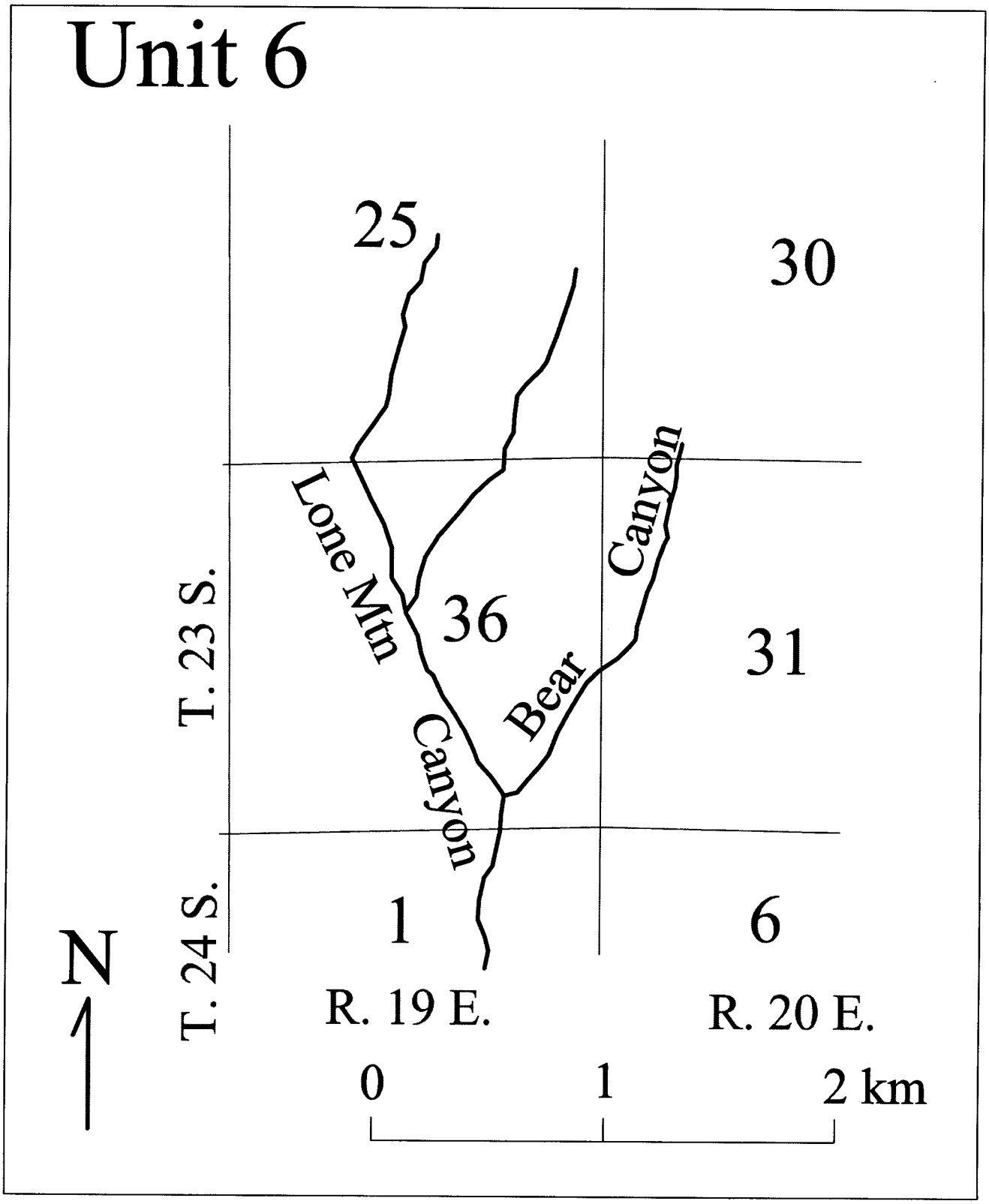
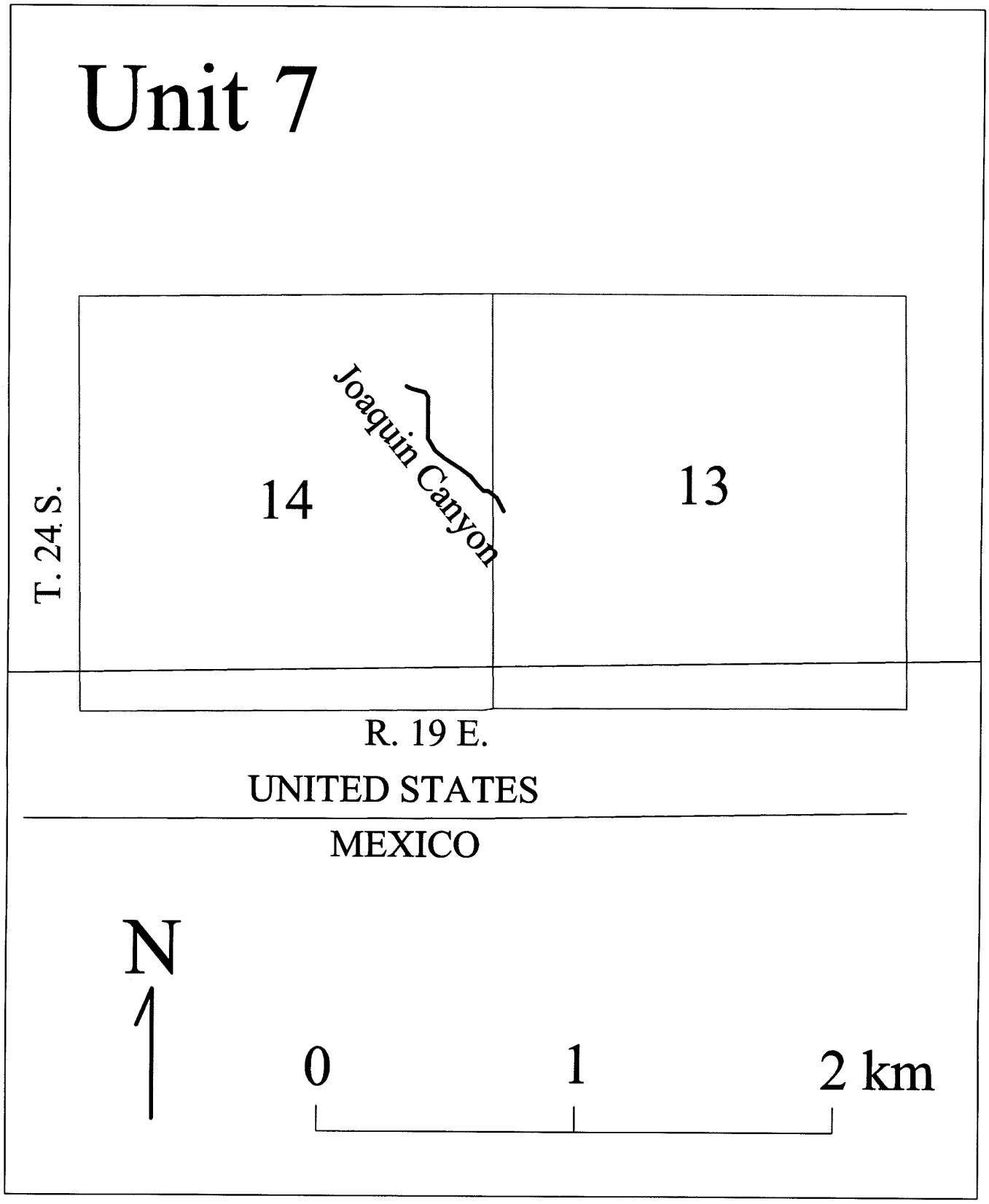

Unit 1
St. Hwy 82
33
34
Sonoita Creek
R. 16 E.
N

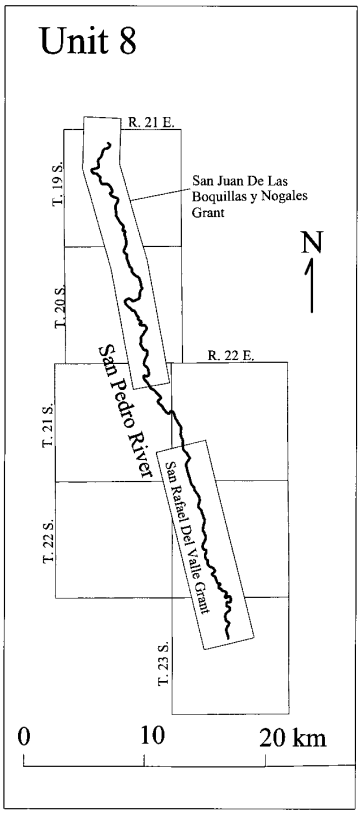

Unit 2
San Rafael De
La Zanja Grant
Santa Cruz River
San Rafael Valley
T. 24 S.
15
14
13
22
23
24
UNITED STATES
MEXICO
R. 17 E.
N
0
1
2 km


Units 3 & 4
R. 19 E.
T. 23 S.
4
3
9
10
16
15
21
Canyon
Sunnyside
Scotia
N
0
1
2 km


Unit 5
Fort Huachuca
Military Reservation
3482000N m
Garden Canyon
3481000N m
3480000N m
560000E m
561000E m
562000E m
N
0
1
2 km


Unit 6
25
30
Lone Mtn
Canyon
36
31
Bear
Canyon
T. 23 S.
T. 24 S.
1
6
N
R. 19 E.
R. 20 E.
0
1
2 km


Unit 7
Joaquin Canyon
14
13
T. 24 S.
R. 19 E.
UNITED STATES
MEXICO
N
0
1
2 km



* * * * *

Dated: December 22, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–34413 Filed 12–23–98; 3:59 pm]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF33

Endangered and Threatened Wildlife and Plants; Proposal to List Nine Bexar County, Texas Invertebrate Species as Endangered

AGENCY: Fish and Wildlife Service Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service, propose to list nine cave-dwelling invertebrates from Bexar County, Texas as endangered species under the Endangered Species Act of 1973, as amended (Act). *Rhadine exilis* (no common name) and *Rhadine infernalis* (no common name) are small, essentially eyeless ground beetles. *Batrisodes venyivi* (Helotes mold beetle) is a small, eyeless mold beetle. *Texella cokendolpheri* (Robber Baron Cave harvestman) is a small, eyeless harvestman (daddy-longlegs). *Cicurina baronia* (Robber Baron cave spider), *Cicurina madla* (Madla's cave spider), *Cicurina venii* (no common name), *Cicurina vespera* (vesper cave spider), and *Neoleptoneta microps* (Government Canyon cave spider) are all small eyeless, or essentially eyeless, spiders. These species (referred to in this proposed rule as the ''nine invertebrates'' are known from karst features (limestone formations containing caves, sinks, and fissures) in north and northwest Bexar County. Threats to the species and their habitat include destruction and/or deterioration of habitat by construction; filling of caves and karst features and loss of permeable cover; contamination from such things as septic effluent, sewer leaks, run-off, and pesticides; predation by and competition with non-native fire ants; and vandalism. This proposal also constitutes our 12-month finding on a petition to list these nine invertebrates. This proposal, if made final, would implement Federal protection provided by the Act for these species.

DATES: Comments from all interested parties must be received by April 29, 1999. Public hearing requests must be received by February 16, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Hartland Bank Building, 10711 Burnet Road, Suite 200, Austin, Texas 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Alisa Shull, Supervisory Fish and Wildlife Biologist (see **ADDRESSES** section) (telephone 512/490–0057; facsimile 512/490–0974).

SUPPLEMENTARY INFORMATION:

Background

Rhadine exilis and *Rhadine infernalis* were first collected in 1959 and described by Barr and Lawrence (1960) as *Agonum exile* and *Agonum infernale*, respectively. Barr (1974) assigned the species to the genus *Rhadine*. *Batrisodes venyivi* was first collected in 1984 and described by Chandler (1992). *Texella cokendolpheri* was first collected in 1982 and described in Ubick and Briggs (1992). *Cicurina baronia, Cicurina madla, Cicurina venii,* and *Cicurina vespera* were first collected in 1969, 1963, 1980, and 1965, respectively. They were all described by Gertsch (1992). *Neoleptoneta microps* was first collected in 1965 and described by Gertsch (1974) as *Leptoneta microps*. The species was reassigned to *Neoleptoneta* following Brignoli (1977) and Platnick (1986).

These nine invertebrates are obligate cave-dwelling species (troglobites) of local distribution in caves in Bexar County, Texas. The life habits of the species are not well known. They probably prey on the eggs, larvae, or adults of other cave invertebrates.

We funded a status survey (Veni 1994a; Redell 1993) of all nine species through a grant under section 6 of the Act to the Texas Parks and Wildlife Department (TPWD). Researchers obtained landowner permission to study and assess threats to 41 caves in north and northwest Bexar County, Texas. Landowners denied permission to access an additional 36 caves that were believed likely to contain species of concern. All 77 caves had been described to some extent before the status survey was conducted. Four were already known to contain at least one of the nine invertebrates.

During the status survey, the researchers made a collection of the invertebrate fauna at each cave studied, assessed the condition of the cave environment and threats to the species, and collected geological data. They used this information to prepare two reports. One report discusses the overall karst geography in the San Antonio region and the potential geologic and geographic barriers to karst invertebrate migration and limits to their distribution (Veni 1994a). The other report (Reddell 1993) details the fauna of each cave visited during the study and presents information obtained from invertebrate collections.

Veni's (1994a) report delineates six karst areas (hereafter referred to as karst fauna regions) within Bexar County. The karst fauna regions he discusses are Stone Oak, UTSA (University of Texas at San Antonio), Helotes, Government Canyon, Culebra Anticline, and Alamo Heights. The boundaries of these karst fauna regions are geological or geographical features that may represent obstructions to troglobite movement (on an evolutionary time scale) that have resulted in the present-day distribution of endemic (restricted in distribution) karst invertebrates in the San Antonio region.

The harvestman *Texella cokendolpheri*, Robber Baron Cave harvestman, is known only from Robber Baron cave in the Alamo Heights karst fauna region on private property. The cave entrance has been donated to the Texas Cave Management Association (George Veni, Veni & Associates, pers. comm. 1995), which will likely be interested in protection and improvement of the cave habitat. However, this cave is relatively large, and the land over and around the cave is heavily urbanized. The cave has also been subject to extensive commercial and recreational use (Veni 1988). No confirmed specimens of *T. cokendolpheri* were collected during the 1993 status survey, but one *Texella* harvestman collected at Robber Baron Cave since completion of the status survey is highly likely to be this species (James Reddell, Texas Memorial Museum, and Dr. Darrell Ubick, California Academy of Sciences, pers. comm. 1995).

Batrisodes venyivi, the Helotes mold beetle, is known from only three caves in the vicinity of Helotes, Texas, northwest of San Antonio. Two of these caves are located in the Helotes karst fauna region on private property. The owner of one of the caves within the Helotes karst fauna region has denied access in recent years, so *Batrisodes venyivi*'s status there is unknown. However, the cave is known to have been heavily infested with fire ants (*Solenopsis invicta*) in the past (Reddell 1993). The owner of the second cave is very interested in protecting the cave and the unique species inside. However, fire ants are also present in the second locality. The collector of the specimen from the third cave has declined to give us a specific site collection record, but this cave may be located in the UTSA karst fauna region and likely lies on private property (James Reddell, pers. comm. 1997).

Rhadine exilis is known from 33 caves in north and northwest Bexar County. Nineteen are located on Department of Defense (DOD) land. The remainder are distributed among the Helotes, UTSA, and Stone Oak karst fauna regions, while one location lies in the Government Canyon region. One is located in a county road right-of-way, one is located in a state-owned natural area, and the remainder are located on private property. Ongoing efforts by the DOD to locate and inventory karst features on Camp Bullis and to document the karst fauna communities in caves on Camp Bullis resulted in discovery of 18 of the 33 caves mentioned above (Veni 1994b; James Reddell, pers. comm. 1997).

Rhadine infernalis is known from 25 caves. This species occurs in five of the six karst fauna regions—Helotes, UTSA, Stone Oak, Culebra Anticline, and Government Canyon. Three subspecies have been delineated so far (*Rhadine infernalis ewersi, Rhadine infernalis infernalis, Rhadine infernalis* ssp.). Two of these have been described and named in scientific literature (Barr 1960, Barr and Lawrence 1960). The third has recently been characterized as a distinct subspecies, but not named, in a report (Reddell 1998). Only three caves contain the subspecies *Rhadine infernalis ewersi* and all are located on DOD land. Sixteen caves contain the subspecies *Rhadine infernalis infernalis* and lie in the Government Canyon, Helotes, UTSA, and Stone Oak regions. Six caves in the Culebra Anticline region contain the *Rhadine infernalis* ssp.

Cicurina venii is known from only one cave located on private property in the Culebra Anticline karst fauna region. The species was collected in 1980 and 1983, but the cave itself was not initially described until 1988 (Reddell 1993). The cave entrance was filled during construction of a home in 1990. Without excavation, it is difficult to determine what effect this incident had on the species; however, there may still be some nutrient input, including that from a reported small side passage.

Cicurina baronia, the Robber Baron cave spider, is known only from Robber Baron Cave in the Alamo Heights karst fauna region. Although the cave entrance is owned and operated by the Texas Cave Management Association, it is located in a heavily urbanized area.

Cicurina madla, the Madla's cave spider, is known from five caves. One cave is within the Government Canyon karst fauna region in Government Canyon State Natural Area, three are located in the Helotes karst fauna region on private property, and one is located on private property in the UTSA karst fauna region.

Cicurina vespera, the vesper cave spider, has been found in only two caves. One is Government Canyon Bat Cave in the Government Canyon State Natural Area, and the other is a cave 5 miles northeast of Helotes, the location and name of which has not been revealed to us.

Neoleptoneta microps is known only from the Government Canyon karst fauna area from two caves within Government Canyon State Natural Area.

Threats to these species and their habitats include destruction and/or deterioration of habitat by commercial, residential, and road construction; filling of caves, and loss of permeable cover; potential contamination from such things as septic effluent, sewer leaks, run-off, and pesticides; predation by and competition with non-native fire ants; and vandalism.

In the course of conducting the 1993 status survey, Veni contacted landowners and requested access to as many caves as possible that were believed to be potential habitat for the nine invertebrates. It is possible that these species occur in some of the caves that could not be visited and that new locations of the nine invertebrates will be discovered in the future. Although these new discoveries may increase the number of locations where the species are found, they are expected to fall within the same general range and expected to face the same threats as the known occurrences of these species. The proposed listing of these species is not based on a demonstrable decline in the number of individuals or the number of known locations of each species, but rather on reliable evidence that each of these species is subject to threats to its continued existence throughout all or a significant portion of its range.

Previous Federal Action

On January 16, 1992, we received a petition dated January 9, 1992, to add the nine invertebrates to the List of Threatened and Endangered Wildlife. Patricia K. Cunningham of the Helotes Creek Association and individuals representing the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association submitted the petition. On December 1, 1993, we announced in the **Federal Register** (58 FR 63328) a 90-day finding that the petition presented substantial information that listing may be warranted. We received over 200 letters from citizens, businesses, and elected officials in response to the 90-day finding. Most of the comments were similar in form, opposed the listing, and requested that we delay making a 12-month finding until the results of status surveys conducted under section 6 of the Act were made available. Some commenters raised questions and issues regarding the status of the nine invertebrates and the validity of the science on which we based the 90-day finding. We considered these comments and information in preparing this proposed rule.

Eight of the nine invertebrates were added to the Animal Notice of Review as category 2 candidate species in the **Federal Register** on November 15, 1994 (59 FR 58982). *Rhadine exilis* was presented with the other eight species in February of 1994 to be added to the November 15, 1994, notice of review, but an oversight occurred and it did not appear. Category 2 candidates were those taxa for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support proposed listing rules. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes. Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules. Although the nine invertebrates were not included in the February 28, 1996, notice of review (61 FR 7596) or in the following September 19, 1997, notice of review (62 FR 49398), we have now obtained additional information that supports a proposal to list these species.

The endangered species listing program was disrupted by a listing moratorium (Public Law 104–6, April 10, 1995) and rescission of listing program funding in Fiscal Year 1996. The moratorium was lifted and listing program funding restored on April 26, 1996. On May 16, 1996 (61 CFR 24722), we issued guidance for priorities in restarting the listing program that included four tiers. New proposed listings and petition findings fell under tier three, the second-lowest priority.

The petition finding and publication of the proposed rule was precluded by the listing priority guidance for fiscal year 1997, finalized December 5, 1996 (61 CFR 64475). In the 1997 guidance, we determined that, given limited

resources, highest priority would be processing emergency listing rules. Second priority would be processing final determinations on proposed additions to the list. Processing administrative findings on petitions and processing new proposals to add species to the lists were again a tier three priority.

With the publication of listing priority guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 CFR 25502), we returned to a more balanced listing program. Processing administrative findings on petitions to add species to the lists became a tier two priority, and we resumed work on this petition finding.

In 1994, we began discussions with a coalition of landowners, developers, and other interested parties about creating a conservation agreement that might preclude the need for listing these species. We have been working since then with interested parties to develop a conservation strategy and agreement. However, all the measures necessary to accomplish this goal have not yet been agreed to. These issues relate primarily to determining what is needed for species conservation, responsibility and commitment for implementation and funding, and the amount of time required to implement the conservation measures. If these issues are resolved before a final listing decision is made, the final listing decision may differ from that proposed here for some or all of these species.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the nine invertebrates are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The range of the nine invertebrates is limited to limestone karst strata in the northern portion of Bexar County, which includes a portion of northern San Antonio, Texas. Their historical range is unknown, but is expected to have been similar to the present range with the understanding that some caves within the species' range have been destroyed and other caves have suffered adverse impacts due to the factors discussed in this proposed rule.

The proximity of the caves and karst features inhabited by these species to the City of San Antonio makes them vulnerable to being filled, capped, destroyed, or otherwise negatively impacted as a result of continuing expansion of the San Antonio metropolitan area. Destruction of caves in Bexar County and throughout central Texas is common (Elliott 1990, Veni 1991). Veni (1991) estimates that about 26 percent of known caves in Bexar County have been destroyed through filling with dirt, rocks, concrete, or other materials; capping or covering by roads or buildings; and blasting by construction and quarrying operations.

Several sources of information from 1991 to 1997 illustrate the considerable development that has occurred and is expected to continue in the San Antonio area in general and the karst faunal regions in particular. For example, a report prepared by the City of San Antonio (1991) indicates that 69 percent of the increase in human population that occurred in Bexar County between 1980 and 1990 occurred in the northwest and northeast quadrants, which is where the nine invertebrates occur. The report describes this period as characterized by ''tremendous growth'' in the residential sector with significant increases also occurring in non-residential growth. During the 1980s Bexar County saw a 26 percent increase in the single family housing market (88 percent of which occurred in the northwest and northeast quadrants), a 46 percent increase in the multi-family housing market, and an approximate 150 percent increase in square feet availability of non-residential space (City of San Antonio 1991).

Overall, the northwest and northeast quadrants of Bexar County contain 69 percent of the county's population and 73 percent of the available housing (City of San Antonio 1991). From 1980–1990, changes in population for the specific census tracts where the nine invertebrates occur (census tracts numbering in the 1200s, 1700s, 1800s, and 1900s) range from a 2.4 percent decrease (tract 1208, Alamo Heights) to a 201 percent increase (tract 1720, Culebra Anticline area). For the 1200, 1700, 1800, and 1900 census tracts the average increase has been 35.4 percent, 13.1 percent, 54.3 percent, and 24.1 percent, respectively. The majority of the increase in development and population during that period occurred during the early 1980s with a drastic decline by 1989.

A report by the City of San Antonio (1993) shows a steady increase in building permit activity, number of plats approved, number of acres and lots platted, and new electrical connections during the period from 1990–1992. This may indicate a growing economy and a subsequent increase in growth and development. This report also indicates that the majority of the growth (about 81 percent, as measured by new electrical connections) is occurring in the northwest and northeast quadrants.

The recent revitalization of the real estate market and the construction industry has intensified the threat to the nine invertebrates. A review of new electrical connections for all Bexar County census tracts from 1990–1996 (San Antonio Planning Department 1997) reveals that tracts within the northwest and northeast quadrants of the city continue to be the fastest growing areas in the county in the present decade. Census tracts numbering in the 1200s, 1700s, 1800s, and 1900s accounted for 21 percent, 10 percent, 31 percent, and 21 percent, respectively, of the new electrical connections in the county from 1990 to 1996 (San Antonio Planning Department 1997). Further review of the data reveals that the majority of the fastest growing sub-tracts are located in karst areas.

Plotting cave locations on land use maps prepared by the Bexar County Appraisal District for northwest Bexar County and the Edwards Aquifer recharge zone shows that most of the privately owned caves lie on land classified as one of the following: single family residential, vacant platted, vacant mixed-use, tax exempt, or ranchland (Table 1). Land classified as single family residential is currently occupied by single family dwellings. Land classified as vacant platted is mostly interspersed with or surrounded by single family residential areas and, since plats have been approved, can be developed at any time. Vacant mixed-use land is land with no agricultural exemption or where rollback taxes have been paid in preparation for a change in land use. Caves located on single family residential, vacant platted, or vacant mixed-use land are most vulnerable to negative impacts related to development. Ranchland is land with an existing agricultural exemption and may be vulnerable to fire ant infestations, siltation due to overgrazing, or to chemicals such as pesticides. Exempt land is government-owned or otherwise tax exempt, and is owned primarily by Federal, State, and local governments or church groups. These caves may be subject to any of the threats associated with other land-use types, depending on the landowner and current land use practices. The DOD has indicated an interest in conserving caves located on its property and is currently

inventorying its cave resources. The TPWD, owners of Government Canyon State Natural Area, should provide habitat protection for caves on their property; however, fire ants are present in some of the caves and throughout the property.

TABLE 1.—NUMBERS OF KARST FEATURES CONTAINING THE NINE INVERTEBRATES BY LAND USE

[Land use according to Bexar County Appraisal District maps for northwest Bexar County and the Edwards Aquifer recharge zone]

Species	Single-family	Vacant platted	Vacant mixed-use	Ranch-land	Tax exempt	Unknown	Total
Rhadine exilis	2	1	3	[1] 2	19 DOD 1 GCSNA 1 Co. ROW [2]	4	33
Rhadine infernalis	.....	.....	.....	.....		.....	25
R. I. ewersi	.....	.....	.....	.....	3 DOD	.....	.....
R. I. infernalis	2	.....	6	2	4 GCSNA 1 Church	1	.....
R. I. new species	2	.....	1	3		.....	.....
Batrisodes venyivi	1	[3] 1	.....	1		.....	3
Texella cokendolpheri	1	.....	.....	.....		.....	1
Cicurina baronia	1	.....	.....	.....		.....	1
Cicurina madla	1	.....	2	1	1 GCSNA	.....	5
Cicurina venii	1	.....	.....	.....		.....	1
Cicurina vespera	.....	.....	.....	.....	1 GCSNA	1	2
Neoleptoneta microps	.....	.....	.....	.....	2 GCSNA	.....	2

[1] 1 in county road right-of-way and 1 across the street from residential neighborhood.
[2] Dept. of Defense, Government Canyon State Natural Area, county road right-of-way.
[3] Exact location unknown.

A number of the caves containing the nine invertebrates occur within the recharge zone for the Edwards Aquifer. The Edwards Underground Water District (1993) presents data suggesting that the Edwards Aquifer recharge zone in northwest Bexar County is ''poised for explosive development as the economy rebounds.'' Spills, leaking storage tanks, and other sources of surface and groundwater pollution can harm cave and karst communities as pollutants pass through the karst. The Texas Water Commission (TWC), now part of the Texas Natural Resource Conservation Commission (TNRCC), reported that in 1988 within the San Antonio segment of the Edwards Aquifer 28 oil and chemical spills occurred in Bexar County. This represented the greatest number of land-based spills in central Texas that affect surface and/or groundwater (TWC 1989). As of July 1988, Bexar County had between 26 and 50 confirmed leaking underground storage tanks (TWC 1989), placing it second among central Texas counties in the number of confirmed underground storage tank leaks. The TWC estimates that, on average, every leaking underground storage tank will leak about 500 gallons per year of contaminants before the leak is detected. These tanks are considered one of the most significant sources of groundwater contamination in the State (TWC 1989).

Increasing urbanization in Bexar County will increase the risk that leaks and spills may harm karst ecosystems. TNRCC (1994) summarizes information on groundwater contamination and lists contaminant spills on a county-by-county basis as reported by TNRCC, the Texas Department of Agriculture, the Railroad Commission of Texas, the Texas Alliance of Groundwater Districts, and the Interagency Pesticide Database. Table 1 in TNRCC (1994) lists 350 groundwater contamination cases that have occurred in Bexar County within the past 2 decades. The majority of these cases involve spills or leaks of petroleum products, and many of them remain unresolved at present.

While a number of the cave entrances concerned may not be in imminent danger from development at the entrance site, cave environments can be negatively impacted by runoff, chemical spills, sewer leaks, pesticide use, and septic effluent associated with development on nearby properties within the karst zone. Many of these caves are situated within the porous limestone that forms the Edwards Aquifer and are susceptible to contamination originating on properties containing the cave entrances, as well as on properties that lie above and adjacent to subterranean reaches of the caves.

Attributes of cave environments that are conducive to occupation by karst invertebrates include a relatively constant high humidity, stable temperature, and some energy input (Howarth 1983; Holsinger 1988; Elliott and Reddell 1989). Nutrient availability and moisture are critical limiting factors for karst fauna occupying terrestrial cave environments (Barr 1968). Adaptations to the high relative humidity and low nutrient availability typical of caves are common among troglobites (Howarth 1983; Mitchell 1967; Barr 1968) and the nine invertebrates exhibit many of these adaptations (Barr 1960; Barr 1974; Gertsch 1974). Nearly all food energy in caves must be imported from the exterior (Holsinger 1988).

Energy enters areas near the cave entrance via species that move between the surface and the cave, including bats, and by means of organic matter that washes into the caves. In deeper reaches

of the cave, primary input of energy is through water containing dissolved organic matter percolating through the karst vertically through fissures and solution features (Howarth 1983; Holsinger 1988; Elliott and Reddell 1989). Rapid urbanization in northern Bexar County would likely result in a dramatic increase in impermeable cover in areas surrounding many of the caves. An increase in impermeable cover could result in decreased percolation of water into the caves via the karst and have a detrimental effect on the moisture regime and nutrient input critical to karst-dwelling species.

Several of the caves containing the nine invertebrates have been subject to vandalism, trash dumping, and other threats that may be associated with visitation by humans. Excessive visitation by humans can result in habitat disturbance or loss of habitat due to soil compaction or changes in atmospheric conditions as well as direct mortality of invertebrates. Vandalism may result in the destruction or deterioration of the karst ecosystem. Dumping of trash (such as alkaline batteries) can lead to contamination of the karst ecosystems while disposal of household and other wastes may attract fire ants or other surface-dwelling species harmful to the karst ecosystem.

Comments we received suggest that trash and debris left in caves can benefit the nine invertebrates by providing supplemental nutrients to the cave ecosystem. While the nine invertebrates need some input of nutrients into the underground environment, the impacts associated with trash dumping in caves are more likely to be negative. Caves and karst features are low-nutrient environments, and many obligate karst-dwelling organisms have evolved adaptations to this unique environment (Mitchell 1967; Barr 1968; Howarth 1983). Over the long term, excess artificial input of nutrients into the karst ecosystem would more likely benefit predators and competitors of the nine invertebrates (see factor C of this section) and upset the natural balance in the karst ecosystem.

Commenters have also stated that, since the nine invertebrates continue to exist in caves where there is a history of dumping, vandalism, or invasion by fire ants (see factor C of this section), these activities must not pose a threat to the species. Karst invertebrates occur in low numbers and are difficult to study. Consequently, detecting small, gradual changes in the populations of karst invertebrates is difficult. While little quantitative data are available on the direct effects of trash dumping, vandalism, fire ants, sealing, and other disturbances on the nine invertebrates, there is substantial evidence indicating that the threats discussed herein are real, significant, and ongoing. Reddell (invertebrate biologist, *in litt.* 1993) and Elliott (cave and karst ecologist, *in litt.* 1993) both cite examples in which trash dumping, vandalism, and over-visitation have resulted in decreased observations of karst invertebrates in affected areas in caves in Travis and Williamson counties. Furthermore, we believe that using extirpation (extinction of a population) as the only measure of threats would significantly compromise the ability to provide for long-term conservation of these species. The earlier that threats are identified, the greater the likelihood that species can be conserved.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* One commenter stated that the only ''documented cause of death'' for karst invertebrates is scientific collecting, and that collecting invertebrates involves major disruption of their habitat. While it is true that positive identification of karst invertebrates usually requires collection and permanent preservation of individual specimens, the number of individuals taken for this purpose is small and such collections are made infrequently. We do not believe that collection of a few individuals has significantly reduced their numbers. Habitat disturbance resulting from searching for species is relatively minor when done by experienced collectors, and usually involves turning over rocks on the cave floor, which are then returned to their previous positions. Thus, we do not consider scientific collecting to be a threat at this time. Further, if the species are listed, a scientific collecting permit will be required and excess collection will not be permitted.

Commenters have also suggested that enlarging cave openings to allow biologists access to sample for karst invertebrates could change the internal cave environment and harm the species. The Service agrees that, in some instances, creation or significant enlargement of cave openings could alter the environment of caves. Where changes in the cave environment are expected to result, the Service recommends returning the opening to its previous natural condition with natural dirt and rock fill or installing an appropriate cave gate designed to provide suitable conditions in the cave and protect the internal environment.

These species are of little interest in the insect trade or to amateur collectors. They are collected only occasionally by scientists conducting studies of cave fauna. Consequently, any threat from overutilization of these species for commercial, recreational, scientific, or educational purposes is insignificant at this time.

C. *Disease or predation.* Human activities facilitate movement of predators such as fire ants into an area. Construction areas, lawns, roadways, and landscaped areas provide habitat from which these species can disperse. The relative accessibility of the shallow caves in Bexar County leaves them especially vulnerable to invasion by non-native species.

Non-native fire ants are a major threat to the nine invertebrates. Fire ants are voracious predators and there is evidence that overall arthropod diversity drops in their presence (Vinson and Sorensen 1986, Porter and Savignano 1990). Reddell (*in litt.* 1993) lists at least nine cave-inhabiting species he has observed being preyed upon by fire ants. Although none of the petitioned species covered in this proposed rule are the species he observed being preyed upon, several of those observed are closely related to the nine invertebrates or to endangered karst invertebrates in Travis and Williamson counties, Texas.

Elliott (1992) cites other examples of predation and notes that fire ant activity has increased dramatically in central Texas since 1989. Even in the unlikely event that fire ants do not affect the proposed species directly, their presence in and around caves could have a drastic detrimental effect on the cave ecosystem through loss of species, inside the cave and out, that provide nutrient input and critical links in the food chain.

Of 36 caves Veni and Reddell visited while conducting a status survey for the nine invertebrates, fire ants were found in 26 caves (Reddell 1993). The 1993 status survey revealed that of 24 caves confirmed to contain one or more of the nine invertebrates, at least 15 had fire ant infestations at the time the study was conducted (Reddell 1993). Most of the collections for the status survey were done between April and June of 1993 at a time during that year when fire ants had likely not reached peak densities (Reddell, pers. comm. 1995). Consequently, fire ant infestations could be worse than reflected by the status survey, and the rate of infestation is expected to be similar for the rest of the 56 caves known to contain one or more of the nine invertebrates.

Controlling fire ants once they have invaded a cave and its vicinity is difficult. Chemical control methods have some effectiveness, but the effect

of these agents on non-target species is unclear. Consequently, use of chemicals to control fire ants in and close to caves is not currently advisable. At present, we recommend only boiling water treatment for control of fire ant colonies near caves inhabited by endangered karst invertebrates in Travis and Williamson counties. This method is labor intensive and only moderately effective. Carefully controlled chemical treatment may be appropriate in certain circumstances. Although control methods are available, the burden of carrying out such practices in areas occupied by these proposed species is not a designated or mandated duty of any agency, organization, or individual. This type of control will likely be needed indefinitely or until a long term method of fire ant control is developed.

D. *The inadequacy of existing regulatory mechanisms.* Invertebrates are not included on the TPWD list of threatened and endangered species and are provided no protection by the State; nor do TPWD's regulations contain provisions for protecting habitat of any listed species. The TNRCC regulations may give some degree of protection to significant aquifer recharge features, but would apply to only a few of the caves in question since the majority do not contribute significantly to recharge. In addition, setbacks from recharge features required by the TNRCC may not always be adequate to protect entire hydrogeological areas and surface communities that provide nutrient input into the cave. The TNRCC also approves capping (concrete sealing) of certain sinkholes and other karst features in an effort to prevent contaminated water from entering the aquifer. Such alteration or blocking of natural drainage patterns could result in drying of the habitat and a reduction in nutrient input into the karst feature.

The City of San Antonio regulates development and impervious (resistant to seepage of water) cover within the recharge area of the Edwards Aquifer. The plan provides limits on types of development that can occur within the recharge zone and limits on impervious cover. This ordinance requires, in part, identification of critical environmental features and may provide some protection for caves and karst features that provide recharge to the Edwards Aquifer. However, most of the caves known to contain the nine invertebrates are relatively small and do not provide significant recharge, so it is uncertain how these caves would be considered under the ordinance. In addition, many of the caves known to have the nine invertebrates lie outside the recharge zone. Finally, development plans filed prior to passage of the ordinance are grandfathered and are not required to comply with the new restrictions.

We are not aware of other regulations that will specifically address the protection of the karst features that serve as habitat for these invertebrate species. At present, adequate, long term conservation of the karst fauna is not assured in any of the caves containing one or more of the nine invertebrates. Five caves located in Government Canyon State Natural Area contain a total of five of the nine invertebrates. The TPWD will likely protect habitat at these sites; however, fire ants are present in some of the caves and throughout the property. Thus, the invertebrate species within those caves are at risk because effective methods of controlling fire ants are not known.

A total of 21 caves containing the proposed species are located on Federal property at the Camp Bullis Training Site. Eighteen caves contain only *Rhadine exilis*, two caves contain only *Rhadine infernalis* and one cave contains both *Rhadine* species. Efforts are underway through the Department of Defense's Legacy program to inventory karst features within the recharge zone on Camp Bullis, and these efforts may result in protection of biologically or hydrologically significant karst features. However, complete protection of the species in these features may require control of fire ants.

E. *Other natural or manmade factors affecting its continued existence.* Just as human activities may facilitate movement of fire ants into an area (see factor C of this section), competitors such as cockroaches and sow bugs can also be introduced into cave ecosystems in association with human activity. Native and non-native species may increase and compete with the nine invertebrates directly by consuming the same foods and using the same habitats; or they may compete indirectly by using resources needed by species, such as cave crickets (*Ceuthophilus* spp.), that provide nutrient input to karst ecosystems. Fire ants can be considered both predators and competitors (see factor C of this section).

Possible impacts from human entry into caves for recreational purposes include habitat disturbance or loss due to soil compaction or changes in atmospheric conditions; abandonment of the cave by animals, including bats, that inhabit caves but must return to the surface for food or other necessities, and in so-doing provide nutrient input to the cave ecosystem; and direct mortality of karst fauna. These impacts may be reduced or avoided depending on the caving skills and caution of the person(s) entering the cave.

Vandalism is also a threat to karst ecosystems and can contribute to an alteration of the cave ecosystem through soil compaction, temperature changes, and contamination from household chemicals such as insecticides (Reddell 1993). Additionally, disturbance of habitat and introduction of excess nutrients, such as garbage, may facilitate the establishment of or increase the numbers of competitors and/or predators (including non-native species) as discussed above. Certain caves have frequently been used for parties and other unauthorized activities. Trash dumping has occurred in numerous Bexar County caves. Reddell (1993) noted in several caves that contain one or more of the nine invertebrates that vandalism has contributed to the degradation of the cave.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Rhadine exilis*, *Rhadine infernalis*, *Batrisodes venyivi*, *Texella cokendolpheri*, *Cicurina baronia*, *Cicurina madla*, *Cicurina venii*, *Cicurina vespera*, and *Neoleptoneta microps* as endangered.

The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. We believe that endangered is the appropriate status for these species because of the high degree and immediacy of threats faced by and limited range of these species.

If the provisions of this rule become final, the karst fauna regions delineated by Veni (1994a) will likely constitute recovery units for the species. The recovery criteria for these species will likely call for, among other things, the preservation of at least three karst fauna areas per karst fauna region, as outlined for endangered karst invertebrates in Travis and Williamson counties, Texas. These criteria are discussed in the Recovery Plan for Endangered Karst Invertebrates in Travis and Williamson Counties, Texas (USFWS 1994). These recovery criteria were designed to protect populations of the species far enough apart to guard against catastrophic loss of all populations within a region and to preserve genetic diversity across each species' range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for the nine invertebrates due to increased threat of taking and lack of benefit.

The publication of precise species locations and maps and descriptions of critical habitat in the **Federal Register**, as required in a proposal to designate critical habitat, would make the nine invertebrates more vulnerable to incidents of vandalism. Vandalism of caves and unauthorized entry have been documented, and are a known threat to the species (see factor A of the Summary of Factors Affecting the Species section). Also, these species cave habitats are located at the edge of a growing urban area. The expanding human population increases the risk that publicizing cave and species locations would increase the likelihood of vandalism of the nine invertebrates' cave habitats.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see ''Available Conservation Measures'' section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Because the nine invertebrates have extremely limited distributions, and because new potentially suitable habitats cannot be constructed (and are not created by nature except in geological time frames), any activity which would cause adverse modification of critical habitat would also likely cause jeopardy to the species.

In addition, a primary threat to the nine invertebrates on Federal lands is predation by and competition with fire ants. Because the threat posed by fire ants would not necessarily be subject to section 7 consultation, designation of critical habitat would not result in reduction of this threat.

Most (35 of 56) of the caves supporting the nine invertebrates are on non-Federal lands, and many of the activities likely to cause adverse modification of these caves (modification of surrounding vegetation and/or drainage patterns, contamination from septic effluent and run-off, predation by and competition with fire ants, and vandalism) do not involve a Federal nexus. The designation of critical habitat on non-Federal lands would not provide any benefit in reducing the threats from these activities. Activities that cause take of the species, however, would be prohibited under section 9 of the Act.

The designation of critical habitat for the purpose of informing Federal agencies and landowners of the known locations of the nine invertebrates is not necessary because we can inform Federal agencies and landowners through other means. We will notify all appropriate Federal agencies and landowners of the importance of protecting the caves these species occupy through our standard notification procedures. Thus, recognition of important areas for conservation of the species can be accomplished without designating critical habitat.

For these reasons, we believe that the increased threat of vandalism through disclosure of cave locations as required in a proposal to designate critical habitat outweighs the benefits provided by such designation, and that, therefore, the designation of critical habitat for the nine invertebrates is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

In addition, section 7(a)(1) of the Act requires all Federal agencies to review the programs they administer and use these programs in furtherance of the purposes of the Act. All Federal agencies, in consultation with us, are to carry out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the Act.

Examples of Federal agency actions that may require conference and/or consultation as described in the preceding paragraphs include operations at military facilities in the San Antonio area (specifically Camp Bullis Military Reservation), Environmental Protection Agency authorization of discharges and

registration and regulation of pesticides; Federal Highway Administration and Army Corps of Engineers (Corps) involvement in such projects as road and bridge construction and maintenance; other Corps projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*); and U.S. Department of Housing and Urban Development activities, funding, and authorizations.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered or threatened wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Because these species are not in trade, we do not expect requests for such permits.

Send requests for copies of regulations regarding listed wildlife and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, Region 2, Endangered Species Listing Coordinator, 500 Gold Avenue SW Room 4012, Albuquerque, NM 87103–1306 (telephone 505/248–6655; facsimile 505/248–6922).

We recognize that some landowners have expressed willingness to work with us to protect the nine invertebrates and that land management strategies that benefit the species and provide clear guidelines for land use in the vicinity of occupied caves can be developed. We intend to work with landowners in developing management plans and conservation agreements for these species.

The karst features inhabited by these species and the ecosystems on which they depend have developed slowly over millions of years and cannot be recreated once they have been destroyed. Protection of the ecosystems that support the nine invertebrates will require maintaining moist, humid conditions and stable temperatures in the air-filled voids; maintaining an adequate nutrient supply; preventing contamination of the water entering the ecosystem; preventing or controlling invasion of non-native species such as fire ants; and other actions as deemed necessary.

Protecting the karst features inhabited by the nine invertebrates will entail protecting sufficient surface and subsurface area surrounding the karst features to maintain the integrity of the karst ecosystem. Due to the paucity of light and limited capability for photosynthesis, karst ecosystems are almost entirely dependent upon surface plant and animal communities for nutrient and energy input. Karst ecosystems receive nutrients from the surface in the form of leaf litter and other organic debris that have washed or fallen into the caves, from tree and other vascular plant roots, or through the feces, eggs, or dead bodies of other species, for example, cave crickets, bats, and raccoons.

A healthy ecosystem surrounding the karst features is important to conservation of the nine invertebrates. Certain animal species, such as cave crickets, daddy-longlegs, raccoons, skunks, and other small mammals, appear to use many caves and karst features, provided there is sufficient area on the surface with habitat to support these species and the cave entrances are not blocked. Recent research indicates cave crickets may forage more than 50 meters from cave entrances (W.R. Elliott, Texas Memorial Museum, pers. comm. 1993).

Cave crickets are an especially important component of the cave ecosystem, because many invertebrates are known to feed on their eggs, nymphs, feces, and dead bodies. Cave crickets typically roost and lay eggs in caves during the day, then emerge at night to feed. They are general predators and scavengers, but the exact food preferences of *Ceuthophilus* species in Texas are still unclear. The daddy-longlegs harvestman (*Leibunum townsendii*), which is abundant in many caves, may similarly introduce nutrients into the cave ecosystem. Raccoons, bats, and other small mammals are also ecologically important in many cave communities because their feces provide a rich medium for the growth of fungi and, subsequently, localized population blooms of several species of tiny, hopping insects that reproduce rapidly on rich food sources and may become prey for some predatory troglobites.

Water quality is also an important factor in conservation of karst invertebrates. Caves and karst features are susceptible to pollution from contaminated water entering the ground because karst has little capacity for purification. Transmission of groundwater flows in karst is comparatively rapid and provides little opportunity for natural filtering or other purifying effects (IUCN 1997). The area that has the greatest potential to contribute water-borne contaminants into the karst ecosystem is the surface and subsurface drainage basin that supplies water to the ecosystem. Certain activities within this hydrologically sensitive area, such as application of pesticides and fertilizers, leakage from sewer lines, and urban runoff, could contaminate the karst ecosystem. The potential for contaminants to travel through karst systems may be increased in some areas relative to others due to local geologic features. Areas surrounding the karst features providing habitat for the nine invertebrates should be maintained so as to minimize the possibility of introducing contaminants into the karst ecosystem.

In addition to providing nutrients to the karst ecosystem, the surface plant community also serves to buffer the karst ecosystem against changes in temperature and moisture regimes, pollutants entering from the surface (Biological Advisory Team 1990, Veni & Associates 1988), and other factors such as sedimentation resulting from soil erosion. Protecting native vegetation may also help control certain non-native species (such as fire ants) that may compete with and/or prey upon the listed species and other karst fauna. Soil disturbance, introduction of nursery plants and sod containing fire ants, garbage (potential food source), and electrical equipment are some of the factors contributing to fire ant infestations.

It is our policy (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. We emphasize that this action is a proposed listing and that the guidelines presented herein are for use in the event that the listing becomes final. Should the species be listed, the discussion and outline presented here should assist landowners and managers

in avoiding a violation of section 9 of the Act.

The guidelines below for determining whether or not an activity is likely to result in take of listed invertebrates are based on karst zone maps prepared by Veni (1994a; see Map 1). These maps show general zones of karst occurrence and do not show specific locations of cave invertebrates. Thus, we believe they provide useful general information without risk of increasing the threat of vandalism to karst features.

Veni (1994a) defines five karst zones in the San Antonio area based on geology, distribution of known caves, distribution of cave fauna, and primary factors that determine the presence, size, shape and extent of caves with respect to cave development. The five zones reflect the likelihood of finding a karst feature that will provide habitat for endemic invertebrates are as follows:

Zone 1—Areas known to contain the proposed endemic cave fauna;

Zone 2—Areas having a high probability of suitable habitat for proposed or other endemic cave fauna;

Zone 3—Areas that probably do not contain proposed or endemic cave fauna;

Zone 4—Areas that require further research but are generally equivalent to zone 3, although they may include sections that could be classified as zone 2 or zone 5; and

Zone 5—Areas that do not contain proposed or endemic cave fauna.

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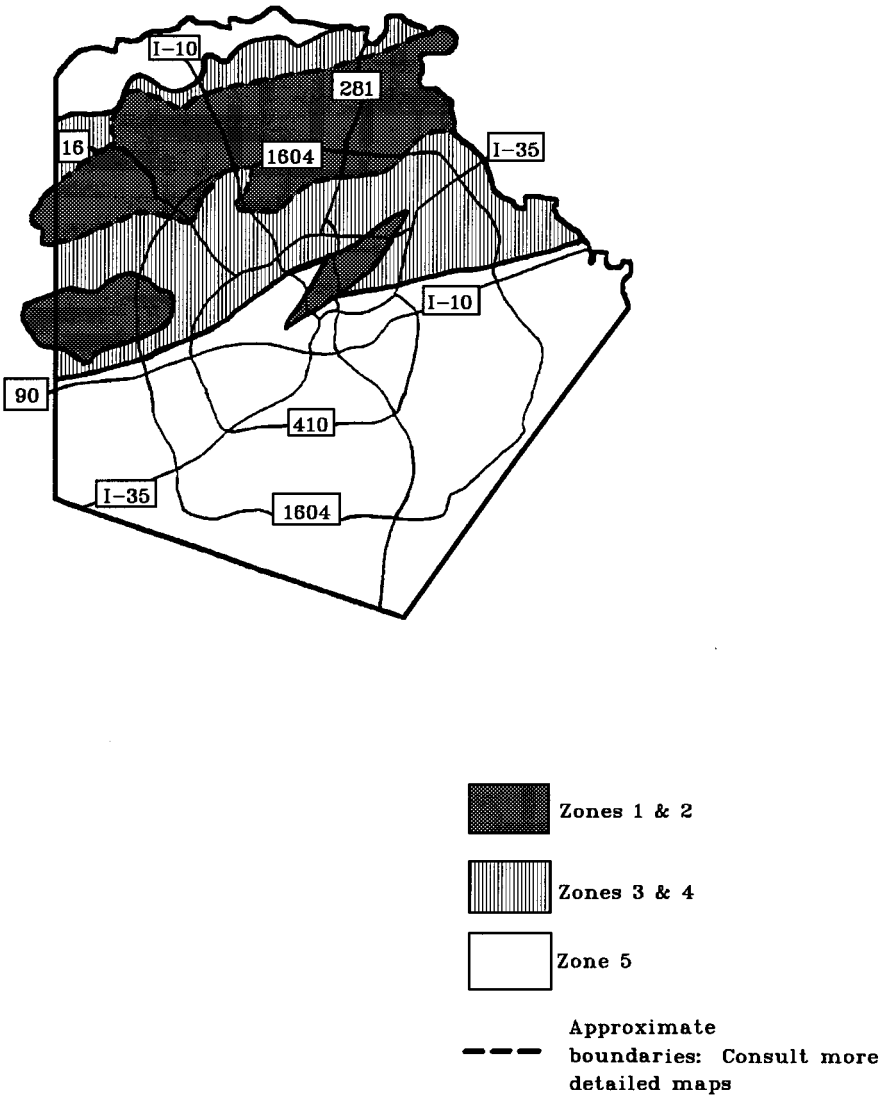
Map 1
Bexar County, Texas
Karst Zones



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Veni (1994a) includes detailed discussion of the geologic makeup of these karst zones. Map 1 simplifies Veni's karst zone maps to show where actions may or may not be likely to take karst invertebrates. Zones 1 and 2 are combined in the shaded areas, zones 3 and 4 are combined in the hatched areas, and the remaining area falls in zone 5. Zone 5 does not have karst-forming strata and the nine invertebrates are not expected to occur in these areas.

The likelihood that an activity in zones 1–4 will result in take of listed invertebrates is directly related to the likelihood of species occurrence and may require specialized knowledge and familiarity with caves, geology of karst areas, and local geology. Persons qualified to identify and evaluate the significance of karst features may include professional geologists or hydrogeologists, biological consultants familiar with cave and karst ecosystems, and other similarly knowledgeable persons. Property owners should take care in conducting karst surveys or selecting a person to conduct a karst survey so as to obtain the most accurate information possible and to avoid doing any damage to a karst feature or the karst ecosystem during the survey.

Collection and identification of karst invertebrates requires specialized knowledge and familiarity with cave biology and ecology and life history of karst invertebrates. Identification of some specimens will require microscopic examination and expert taxonomic assistance. Persons qualified to search for karst invertebrates and make preliminary identifications of specimens should also be able to evaluate various karst features' suitability as habitat for the species. Extreme care must be taken when surveying for invertebrates in karst ecosystems, and these invertebrate surveys should not be undertaken by an amateur. If this proposed rule is finalized, individuals wishing to collect the nine invertebrates will be required to obtain a scientific permit from us and submit all specimens collected to a museum for evaluation and preservation.

We believe that, based on the best available information, activities in zones 1–4 that could potentially result in take include, but are not limited to:

(1) Collecting or handling of the species;

(2) Surface or subsurface activities that may directly result in destruction or alteration of species' habitat (such as trenching for installation of utility or sewer lines, excavation, etc.);

(3) Alteration of the topography within the surface or subsurface drainage area or other alterations to any cave or karst feature providing habitat for the species that results in changes to the cave environment (such as filling cave entrances or otherwise reducing airflow which limits oxygen availability; increasing airflow that results in drying; altering natural drainage patterns with the result of changing the amount of water entering the cave or karst feature; increasing impervious cover within the surface or subsurface drainage areas of the cave or karst feature; altering the entrance or opening of the cave or karst feature in a way that would disrupt movements of raccoons, opossums, cave crickets, or other animals that provide nutrient input; etc.);

(4) Discharge or dumping of chemicals, silt, pollutants, household or industrial waste, or other harmful material into karst features or areas that drain into karst features;

(5) Pesticide or fertilizer application in or near karst features containing the nine invertebrates or areas that drain into these karst features. Careful use of pesticides in the vicinity of karst features may be necessary in some instances to control non-native fire ants. Guidelines for controlling fire ants in the vicinity of karst features are available from us (see **ADDRESSES** section);

(6) Activities within caves that lead to soil compaction, changes in atmospheric conditions, abandonment of the cave by bats or other fauna, or direct mortality of the species.

(7) Activities that attract fire ants or cockroaches to caves or karst features (e.g., dumping of garbage into caves or karst features).

Activities that we believe will not result in a violation of section 9, provided such activities do not result in any of the situations described above, include:

(1) Activities authorized under sections 7 or 10 of the Act.

(2) Construction activities in non-karstic areas;

(3) Maintenance of existing roads;

(4) Recreational activities on the surface, including camping, hiking, and hunting;

(5) Maintenance of established lawns and other landscaping features, including mowing, pruning, seeding, removing dead trees, and planting trees and shrubs, particularly using native plant species;

(6) Legal use of pesticides in areas that do not drain into karst features.

We welcome the involvement of landowners in conservation efforts for the nine invertebrates. Conservation measures for these species may include careful fire ant control in the vicinity of occupied karst features; construction/disturbance setbacks from caves; and avoidance of the use of chemical pesticides or fertilizers, surface topography alteration, and trenching within specific areas.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the San Antonio area and their possible impacts on these species;

(5) Existing local, State, or Federal regulations that provide protection for these species and/or the caves and karst features that provide habitat for the species; and

(6) Appropriateness of using the karst regions outlined in Veni (1994a, Figure 1) as recovery units in the event the species are listed.

We will submit the available scientific data and information to appropriate, independent specialists for review. We will summarize the opinions of these reviewers in the final decision document. In making a final decision, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final determination that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, U.S Fish and Wildlife Service (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers

to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful in understanding the rule? (3) What else could we do to make the rule easier to understand?

Send a copy of any comments on making this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. 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 additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

References Cited

A complete list of references cited herein, as well as others, is available upon request from the Field Supervisor, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h) add the following to the List of Endangered and Threatened Wildlife in alphabetical order under ''ARACHNIDS'' and ''INSECTS:''

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Common name	Scientific name					
ARACHNIDS						
*	*	*	*	*	*	*
Harvestman, Robber Baron Cave	*Texella cokendolpheri*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
Spider, Government Canyon cave	*Neoleptoneta microps*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
Spider, [no common name]	*Cicurina venii*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
Spider, Madla's cave	*Cicurina madla*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
Spider, Robber Baron cave	*Circurina baronia*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
Spider, vesper cave	*Cicurina vespera*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
INSECTS						
*	*	*	*	*	*	*
Beetle, [no common name]	*Rhadine exilis*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*
Beetle, [no common name]	*Rhadine infernalis*	U.S.A. (TX)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Common name	Scientific name					
*	*	*	*	*	*	*
Beetle, Helotes mold	*Batrisodes venyivi*	U.S.A. (TX)	E		NA	NA
*	*	*	*	*	*	*

Dated: December 18, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–34410 Filed 12–29–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8313–01; I.D. 121098D]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 1999 Harvest Specifications for Groundfish

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

ACTION: Proposed 1999 specifications for groundfish and associated management measures; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 1999 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1999 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by January 25, 1999.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

The preliminary 1999 Stock Assessment and Fishery Evaluation (SAFE) report, dated September 1998, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: Background for the 1999 Proposed Harvest Specifications.

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 679.20(a)(1)(i)). Regulations under § 679.20(c)(1) further require NMFS to publish annually and solicit public comment on proposed annual TACs, prohibited species catch (PSC) allowances, and seasonal allowances of the pollock TAC. The proposed specifications set forth in Tables 1 through 7 of this proposed action satisfy these requirements. For 1999, the proposed sum of TACs is 1.925 million mt. Tables 8 through 10 specify limitations for catcher/processor vessels listed in section 208(e)(1) through (20) of the American Fisheries Act (AFA) contained within the Omnibus Appropriations Bill for FY 99; Pub. L. 105–277. Under § 679.20(c)(3), NMFS will publish the final annual specifications for 1999 after considering: (1) comments received within the comment period (see **DATES**) and (2) consultations with the Council at its December 9, 1998 meeting.

Regulations at § 679.20(c)(2)(ii) require that one-fourth of each proposed initial TAC (ITAC) amount and apportionment thereof, one-fourth of each Community Development Quota (CDQ) reserve established under § 679.20(b)(1)(iii), one-fourth of each proposed PSC allowance established under § 679.21, and the first seasonal allowance of pollock become available at 0001 hours Alaska local time (A.l.t.), January 1, and remains available until superseded by the final specifications. If approved by NMFS, proposed management measures for the Atka mackerel fishery (63 FR 60288, November 9, 1998) will also require that the first seasonal allowance of Atka mackerel TAC be specified on an interim basis. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line and pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota management plan.

Prior to January 1, 1999, NMFS will publish in the **Federal Register**, the interim TAC specifications and apportionments thereof for the 1999 fishing year. These interim specifications are scheduled to become effective 0001 hours, A.l.t. January 1, 1999, and remain in effect until superseded by the final 1999 harvest specifications.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists.

The Bering Sea Groundfish Plan Team (Plan Team) acknowledged that for purposes of the proposed 1999 Overfishing Levels and ABC amounts, the best information currently available is set forth in the final SAFE report for the 1998 BSAI groundfish fisheries dated November 1997. The Plan Team further acknowledged that information on the status of stocks will be updated with the 1998 survey results and reconsidered by the Plan Team at its November 1998 meeting. The Plan Team's preliminary recommendation was to rollover 1998 ABC, overfishing,

and TAC amounts and to reconsider these amounts at the December 1998 Council meeting after new status of stocks information has been incorporated by the Plan Team into a final SAFE report.

At its October 1998 meeting, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed the Plan Team's preliminary recommendations. With one exception, the SSC, AP, and Council concurred with the Plan Team's recommendations. The Council recommended a 75,000 mt reduction in the AP- and SSC-recommended Bering Sea pollock ABC and TAC, from 1.110 million mt to 1.035 million mt. This reduction was recommended in consideration of preliminary 1998 survey data that indicated decreased biomass abundance of this stock. None of the Council's recommended TACs for 1999 exceed the recommended ABC for any species category. Therefore, NMFS finds that the recommended TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the proposed 1999 Overfishing Levels, ABC, and TAC amounts for groundfish in the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed here.

TABLE 1.—PROPOSED 1999 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]

Species	Area	ABC	TAC	ITAC [2]	CDQ reserve [3]	Overfishing level
Pollock [4]	Bering Sea (BS)	1,035,000	1,035,000	875,610	103,500	2,060,000
	Aleutian Islands (AI)	23,800	23,800	20,135	2,380	31,700
	Bogoslof District	6,410	1,000	846	100	8,750
Pacific cod	BSAI	210,000	210,000	178,500	15,750	336,000
Sablefish [5]	BS	1,300	1,300	553	179	2,160
	AI	1,380	1,380	293	233	2,230
Atka mackerel	Total	64,300	64,300	54,655	4,823	134,000
	Western AI	27,000	27,000	22,950	2,025	
	Central AI	22,400	22,400	19,040	1,680	
	Eastern AI/BS	14,900	14,900	12,665	1,118	
Yellowfin sole	BSAI	220,000	220,000	187,000	16,500	314,000
Rock sole	BSAI	312,000	100,000	85,000	7,500	449,000
Greenland turbot	Total	15,000	15,000	12,750	1,125	22,300
	BS		10,050	8,543	754	
	AI		4,950	4,208	371	
Arrowtooth flounder	BSAI	147,000	16,000	13,600	1,020	230,000
Flathead sole	BSAI	132,000	100,000	85,000	7,500	190,000
Other flatfish [6]	BSAI	164,000	89,434	76,019	6,708	253,000
Pacific ocean perch	BS	1,400	1,400	1,190	105	3,300
	AI Total	12,100	12,100	10,285	908	20,700
	Western AI	5,580	5,580	4,743	419	
	Central AI	3,450	3,450	2,933	259	
	Eastern AI	3,070	3,070	2,610	230	
Other red rockfish [7]	BS	267	267	227	20	356
Sharpchin/Northern	AI	4,230	4,230	3,596	317	5,640
Shortraker/rougheye	AI	965	965	820	72	1,290
Other rockfish [8]	BS	369	369	314	28	492
	AI	685	685	582	51	913
Squid	BSAI	1,970	1,970	1,675	126	2,620
Other species [9]	BSAI	25,800	25,800	21,930	1,645	134,000
Non-specific CDQ [10]	BSAI				492	
Total		2,379,976	1,925,000	1,630,579	171,081	4,202,451

[1] Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) Area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the BS includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see § 679.31(a)(1)).

[4] Ten percent of the pollock TAC is allocated to the pollock CDQ fishery under paragraph 206(a) of the AFA. After deduction of the pollock CDQ reserve, a 6 percent incidental catch reserve (for pollock harvested in other fisheries) is then deducted (see section 206(b) of the AFA), the result is the 1999 proposed ITAC for pollock.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.31(c)).

[6] "Other flatfish" includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[7] "Other red rockfish" includes shortraker, rougheye, sharpchin, and northern rockfish.

[8] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye rockfish.

[9] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2 are not included in the "other species" category.

[10] Fifteen percent of the groundfish CDQ reserve established for squid, arrowtooth flounder, and "other species" is allocated to a non-specific CDQ reserve found at § 679.31(g).

Reserves

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock be requiring that the 1999 TAC for this species be fully allocated among the CDQ program, incidental catch allowance, and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve, and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. As discussed below section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Fifteen percent of the groundfish CDQ reserve established for squid, arrowtooth flounder and ''other species'' is allocated to a non-specific CDQ reserve. Regulations governing the use and release of the non-specific CDQ reserve are found at § 679.31(g). Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at § 679.30 and § 679.31.

The remainder of the non-specified reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the ''other species'' category during the year, providing that such reapportionments do not result in overfishing.

Allocation of the Pollock TAC

Pollock Allocations under the AFA

Section 206(a) of the AFA requires that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, is allocated as follows; 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

For 1999, NMFS is proposing an incidental catch allowance of 6 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance was determined based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1994 through 1997. During this 4-year period, the incidental catch of pollock as a percentage of the TAC ranged from a low of 4.9 percent in 1996 to a high of 6.3 percent in 1997 with a 4-year average of 5.6 percent. NMFS acknowledges that the incidental catch of pollock in other fisheries declined in 1998 to about 3 percent of the TAC as a result of new mandatory retention and utilization standards for this species (§ 679.27). However, uncertainty about continued low incidental pollock catch in other fisheries, and mandates under the AFA to optimize the opportunity for the harvest of the allocated pollock directed fishery allowances, support a conservative incidental catch allowance. NMFS intends to initiate rulemaking in 1999 that would provide NMFS with the authority to reallocate a portion of the incidental catch reserve of pollock to the three components of the directed fishery in the proportions specified under the AFA if NMFS determines that the projected amount will not be needed in the other groundfish fisheries.

The AFA also contains three specific pollock allocations that must be specified annually. First, paragraph 208(e)(21) of the AFA specifies that catcher/processors qualifying to fish for pollock under this paragraph are prohibited from harvesting in the aggregate a total of more than one-half (0.5) percent of the pollock allocated to vessels for processing by offshore catcher/processors. Second, paragraph 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest only by offshore catcher vessels harvesting pollock for processing by offshore catcher/processors listed in section 208(b). Third, paragraph 210(e)(1) prohibits any particular individual, corporation, or other entity from harvesting a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. These allocations and catch limits are proposed in Table 2.

When recommending seasonal allowances of the pollock TAC, the Council considered the factors specified in section 14.4.10 of the FMP. Likewise, in proposing seasonable allowances, NMFS also considered these factors. Under § 679.20(a)(5)(i)(A), the pollock ITAC for each subarea or district of the BSAI is divided into two seasonal allowances. The first allowance is made available for directed fishing from January 1 to April 15 (A season), and the second allowance is made available from September 1 until November 1 (B season). The Council recommended that the seasonal allowances for the Bering Sea pollock A and B seasons be specified at 45 percent and 55 percent of the ITAC amounts, respectively (Table 2). As in past years, 100 percent of the pollock ITAC amounts specified for the Aleutian Islands subarea and the Bogoslof District would be apportioned to the A season, with any TAC remaining following the end of A season made available during the B season.

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE, CATCHER/PROCESSOR, AND MOTHERSHIP COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1]

Subarea & component	TAC	Incidental catch allowance [2]	CDQ reserve [3]	Directed fishing allowance	A season [4]	B season [5]
Bering Sea:						
Inshore	.....	.....	.....	437,805	197,012	240,793
Mothership	.....	.....	.....	87,561	39,402	48,159
Offshore catcher/processor and catcher vessel total	.....	.....	.....	350,244	157,610	192,634
Listed catcher/processors [6]	.....	.....	.....	.....	144,213	176,260
Listed catcher vessels [6]	.....	.....	.....	.....	13,397	16,374

TABLE 2.—PROPOSED SEASONAL ALLOWANCES OF THE INSHORE, CATCHER/PROCESSOR, AND MOTHERSHIP COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1]—Continued

Subarea & component	TAC	Incidental catch allowance [2]	CDQ reserve [3]	Directed fishing allowance	A season [4]	B season [5]
Section 208(e)(21) vessels [7]	.....	.....	.....	.....	788	963
Total	1,035,000	55,890	103,500	875,610	394,025	481,586
Aleutian Islands:						
Inshore	.....	.....	.....	10,067	10,067	[8]
Mothership	.....	.....	.....	2,013	2,013	[8]
Offshore catcher/processor and catcher vessel total	.....	.....	.....	8,054	8,054	[8]
Listed catcher/processors [6]	.....	.....	.....	.....	7,369	[8]
Listed catcher vessels [6]	.....	.....	.....	.....	685	[8]
Section 208(e)(21) vessels [7]	.....	.....	.....	.....	40	[8]
Total	23,800	1,285	2,380	20,135	20,135	[8]
Bogoslof District:						
Inshore	.....	.....	.....	423	423	[8]
Mothership	.....	.....	.....	85	85	[8]
Offshore catcher/processor and catcher vessel total	.....	.....	.....	338	338	[8]
Listed catcher/processors [6]	.....	.....	.....	.....	310	[8]
Listed catcher vessels [6]	.....	.....	.....	.....	29	.....
Section 208(e)(21) vessels [7]	.....	.....	.....	.....	2	[8]
Total	1,000	54	100	846	846	[8]

[1] After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent.
[2] The pollock incidental catch allowance is 6 percent of the TAC after subtraction of the CDQ reserve.
[3] Under paragraph 206(a) of the AFA, the CDQ reserve for pollock is ten percent.
[4] January 1 through April 15.
[5] September 1 until November 1.
[6] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.
[7] The AFA requires that vessels described in paragraph 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by listed catcher/processors.
[8] Remainder.

Allocation of the Atka Mackerel TAC

Under § 679.20(a)(8), up to 2 percent of the Eastern Aleutian Islands district and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. At its October 1998 meeting, the Council proposed an allocation of 1 percent of the Atka mackerel TAC in the Eastern Aleutian Islands district/Bering Sea subarea to the jig gear fleet. Based on a proposed ITAC of 12,665 mt, the jig gear allocation would be 127 mt.

Due to concerns about the potential impact of the Atka mackerel fishery on Steller sea lions and their critical habitat, NMFS published a proposed rule on November 9, 1998 (63 FR 60288) that would implement temporal and spatial changes in the Atka mackerel fisheries. This proposed rule would divide the BSAI Atka mackerel ITAC into two equal seasonal allowances. The first allowance would be made available for directed fishing from January 1 to April 15 (A season), and the second seasonal allowance would be made available from September 1 to November 1 (B season)(see Table 3). Additionally, fishing with trawl gear in areas defined as Steller sea lion critical habitat (see Table 1, Table 2, and Figure 4 of 50 CFR 226) within the Western and Central Aleutian Islands subareas would be prohibited during each Atka mackerel season once specified percentages of the TAC have been reached. In 1999, the specified catch percentage would be 65 percent of each seasonal allowance for the Western Aleutian Islands and 80 percent of each seasonal allowance for the Central Aleutian Islands.

For the Eastern Aleutian Islands and Bering Sea subarea, there would be no critical habitat closures based on Atka mackerel catch percentages inside critical habitat areas under the proposed rule. However, the proposed rule does include a variety of changes to current critical habitat designations in both time and space within the Aleutian Islands District. See the proposed rule published on November 9, 1998 (63 FR 60288) for a detailed description of proposed regulatory changes to the Atka mackerel fishery.

TABLE 3.—PROPOSED 1999 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1, 2]

Subarea & component	TAC	CDQ reserve	ITAC	Seasonal apportionment [3]			
				A season [4]		B season [5]	
				Inside CH [6]	Total	Inside CH [6]	Total
Western Aleutian Islands (543)	27,000	2,025	22,950	7,459	11,475	7,459	11,475
Central Aleutian Islands (542)	22,400	1,680	19,040	7,616	9,520	7,616	9,520

TABLE 3.—PROPOSED 1999 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC[1, 2]—Continued

Subarea & component	TAC	CDQ reserve	ITAC	Seasonal apportionment[3]			
				A season[4]		B season[5]	
				Inside CH[6]	Total	Inside CH[6]	Total
Eastern AI/BS[7]	14,900	1,118	12,665				
Jig (1%)[8]			127		127		
Other gear (99%)			12,538		6,269		6,269
Total	64,300	4,823	54,655		27,391		27,264

[1] Amounts are in metric tons.
[2] Based on proposed regulations published in the **Federal Register** on November 9, 1998 (63 FR 60288).
[3] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season.
[4] January 1 through April 15.
[5] September 1 through November 1.
[6] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (Table 1, Table 2, and Figure 4 of 50 CFR part 226). In 1999, the percentage of TAC available for fishing inside critical habitat is 65 percent in the Western AI and 80 percent in the Central AI. When these critical habitat allowances are reached, critical habitat areas will be closed to trawling for the remainder of the fishing season.
[7] Eastern Aleutian Islands District and Bering Sea subarea.
[8] Regulations at § 679.20(a)(8) require that up to 2 percent of the Eastern AI area ITAC be allocated to the Jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the Jig gear fleet. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. The portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processor vessels. At its October 1998 meeting, the Council recommended seasonal allowances for the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). They are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and when Pacific halibut bycatch rates are low. Table 4 lists the proposed 1999 allocations and seasonal apportionments of the Pacific cod ITAC. Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the hook-and-line and pot gear allocation that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

TABLE 4.—PROPOSED 1999 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC

Gear	Percent ITAC	Share ITAC (mt)	Seasonal apportionment		
			Date	Percent	Amount
Jig	2	3,570	Jan 1–Dec 31	100	3,570
Hook-and-line/pot gear	51	91,035	Jan 1–Apr 30[1]	71	65,000
			May 1–Aug 31	15	13,784
			Sep 1–Dec 31	13	12,251
Trawl gear	47	83,895	Jan 1–Dec 31	100	83,895
Catcher vessel (50%)		41,948			
Catcher/processor (50%)		41,948			
Total	100	178,500			

[1] Any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery will be reapportioned to the third seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a proposed ITAC of 820 mt, the trawl allocation would be 574 mt and the non-trawl allocation would be 246 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4) require that sablefish TACs for the BSAI subareas be allocated between trawl and hook-and-line or pot gear types. Gear allocations of TACs are established as follows: Bering Sea subarea: Trawl gear—50 percent and hook-and-line/pot gear—50 percent; and Aleutian Islands subarea: Trawl gear—25 percent and hook-and-line/pot gear—75 percent. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be withheld as sablefish CDQ. Additionally, regulations at § 679.20(b)(iii)(A) require that 7.5 percent of the trawl allocation of sablefish (one half of the reserve) be withheld as groundfish CDQ reserve. Gear allocations of the proposed sablefish TAC and CDQ reserve amounts are specified in Table 5.

TABLE 5.—1999 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea & gear	Percent of TAC	Share of TAC (mt)	ITAC(mt) [1]	CDQ reserve
Bering Sea:				
Trawl [2]	50	650	553	49
Hook-&-line/pot gear [3]	50	650	N/A	130
Total		1,300	553	179
Aleutian Islands:				
Trawl	25	345	293	26
Hook-&-line/pot gear	75	1,035	N/A	207
Total	.....	1,380	293	233

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the multi-species CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch (PSC) Limits for Halibut, Crab and Herring

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,775 mt mortality of Pacific halibut (§ 679.21(e)(1)(v)) and for non-trawl fisheries, the limit is 900 mt mortality (§ 679.21(e)(2)(i)). PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

For 1999, the proposed PSC limit of red king crab in Zone 1 for trawl vessels is 200,000 crab. Based on the criteria set out at § 679.21(e)(1)(ii), the number of mature female red king crab was estimated in 1998 to be above the threshold of 8.4 million animals, and the effective spawning biomass is estimated to be 56 million pounds (greater than the 55 million pound threshold level)(§ 679.21(e)(1)(ii)(C)).

The proposed 1999 *C. bairdi* PSC limit for trawl gear is 750,000 animals in Zone 1 and 1,878,000 animals in Zone 2. These limits are based on the most recent survey data from 1998 and on the criteria set out at § 679.21(e)(1)(iii). In Zone 1, *C. bairdi* abundance was estimated to be greater than 150 million and less than 270 million animals (§ 679.21(e)(1)(ii)(A)(*2*)). In Zone 2, *C. bairdi* abundance was estimated to be less than 175 million animals, and therefore calculated at 1.2 percent of the abundance level of 156.6 million crabs, resulting in the limit of 1.878 million crabs (§ 679.21(e)(1)(iii)(B)(*2*)).

Under § 679.21(e)(1)(iv) the PSC limit for *C. opilio* is based on total abundance as indicated by the NMFS standard trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the 1998 Bering Sea abundance index, with a minimum PSC of 4.5 million crab and a maximum PSC of 13 million crab. Based on the 1998 survey estimate of 3.233 billion crabs, the calculated limit would be 3,663,000 crabs. Because this limit falls below the minimum level, the proposed 1999 *C. opilio* PSC limit is 4.5 million crabs.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass (§ 679.21(e)(1)(vi)). NMFS's best estimate of 1999 herring biomass is 168,512 mt. This amount was derived using 1998 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Therefore, the proposed herring PSC limit for 1999 is 1,685 mt.

Under § 679.21(e)(1)(i) 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The proposed fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 6.

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an amount of the annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The Council has proposed that this amount be set at 10,000 animals based on the need to optimize the harvest of rock sole early in the fishing year. This amount is derived by reducing the Council's red king crab bycatch allowance proposed for the rock sole/other flatfish/flathead sole fishery category by 10,000 red king crabs.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, the Council recommended that pot gear, jig gear, and sablefish hook-and-line gear fishery categories be exempt from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 1998, total groundfish catch for the pot gear fishery in the BSAI was approximately 12,785 mt with an associated halibut bycatch mortality of about 34 mt. The 1998 groundfish jig gear fishery harvested about 181 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) length overall and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish Individual Fishing Quota (IFQ) fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This action results in lowered amounts of halibut discard in the fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 1998 has not been

calculated, but NMFS believes that it would not be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts. NMFS anticipates that the Council will recommend seasonal apportionments during its December 1998 meeting, and none are proposed at this time.

TABLE 6.—PROPOSED 1999 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [1]	C. bairdi (animals)	
					Zone 1	Zone 2
Trawl Fisheries:						
Yellowfin sole	930	263	18,500	3,038,625	255,592	885,947
Rock sole/oth.flat/flat sole [2]	735	22	128,750	749,250	273,848	295,316
RKCSS [3]	.....	.....	10,000	.....	.....	.....
Turbot/sablefish/arrowtooth [4]	.....	.....	.....	41,625	.....	.....
Rockfish	69	8	.....	41,625	.....	5,790
Pacific cod	1,434	22	13,875	124,875	123,232	161,307
Midwater trawl pollock [5]	.....	1,218	.....	.....	.....	.....
Pollock/Atka/other [6]	324	152	13,875	166,500	41,078	388,790
Total Trawl PSC	3,492	1,685	185,000	4,162,500	693,750	1,737,150
Non-Trawl Fisheries:						
Pacific cod	749	.....	.....	.....	.....	.....
Other non-trawl	84	.....	.....	.....	.....	.....
Groundfish pot & jig	[8]	.....	.....	.....	.....	.....
Sablefish hook-and-line	[8]	.....	.....	.....	.....	.....
Total Non-Trawl	833	.....	.....	.....	.....	.....
PSQ Reserve [7]	350	.....	15,000	337,500	56,250	140,850
Grand Total	4,675	1,685	200,000	4,500,000	750,000	1,878,000

[1] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21(e)(7)(iv)(B). At its October meeting the Council further apportioned *C. opilio* by percentage to the following fisheries: yellowfin sole 73%, rock sole 18%, turbot 1%, rockfish 1%, Pacific cod 3%, and pollock 4%.
[2] Rock sole, flathead sole, and other flatfish fishery category.
[3] The Council at its October 1998 meeting allocated 10,000 red king crab for trawl fisheries within the RKCSS (§ 679.21 (e)(3)(ii)(B)).
[4] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[5] Halibut and crab bycatch in the midwater trawl pollock fishery is deducted from the allowances for the pollock/Atka mackerel/other species category. Once bycatch allowances are reached, directed fishing for pollock with non-pelagic trawl gear is prohibited.
[6] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.
[8] Exempt.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator) will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

The Council recommended that the assumed recommended halibut mortality rates developed by staff of the International Pacific Halibut Commission (IPHC) for the 1998 BSAI groundfish fisheries be adopted for purposes of monitoring halibut bycatch allowances established for 1999. The justification for these mortality rates is discussed in the preliminary SAFE report dated September, 1998. The proposed mortality rates listed in Table 7 are subject to change pending the results of an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff presented to the Council at the Council's December 1998 meeting.

TABLE 7.—PROPOSED ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1999

Fishery	Assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	12
Pacific cod	11
Greenland turbot	19
Sablefish	18
Other Species	11

TABLE 7.—PROPOSED ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1999—Continued

Fishery	Assumed mortality (percent)
Trawl gear fisheries:	
Midwater pollock	85
Non-pelagic pollock	76
Yellowfin sole	78
Rock sole	76
Flathead sole	62
Other flatfish	69
Rockfish	72
Pacific cod	69
Atka mackerel	85
Greenland turbot	73
Sablefish	23
Other species	69
Pot gear fisheries:	
Pacific cod	4
Other species	4

Protections for Other Fisheries Under the AFA

Section 211(b)(2)(A) of the AFA prohibits catcher/processors listed under paragraphs 1 through 20 of section 208(e) (listed catcher/processors) from harvesting in the aggregate more than a specified amount of each non-pollock groundfish species in the BSAI. Non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels would not be deducted from the 1999 harvest limits proposed in Table 8 for the listed catcher/processors. Except for Atka mackerel, the catch limitations specified for the listed catcher/processors are equivalent to the percentage of non-pollock groundfish harvested in the non-pollock fisheries by the listed catcher/processors and those listed under Section 209 of the AFA during 1995, 1996, and 1997. The non-pollock groundfish harvest amounts by these vessels in the BSAI from 1995 through 1997 are shown in Table 8. These data were used to calculate the relative amount of non-pollock groundfish TACs harvested by pollock catcher/processors in the non-pollock fisheries, and then used to determine the proposed harvest limits for non-pollock groundfish by listed catcher/processors in the 1999 BSAI fisheries (see Table 8).

TABLE 8.—PROPOSED HISTORICAL CATCH RATIO, 1999 AGGREGATE CATCH LIMITS, AND 1999 PSC CATCH LIMITS FOR POLLOCK VESSELS DESCRIBED UNDER SECTION 208 OF THE AFA.[1, 2]

Target species[3]	Area	1995–1997			1999 ITAC available to trawl C/Ps	1999 C/P harvest limit[5]
		Total catch	Available TAC	Ratio[4]		
Atka mackerel[6]	Eastern AI/BS	.....	.....	.....	.....	.....
	Central AI	.....	.....	0.115	19,040	2,190
	Western AI	.....	.....	0.200	22,950	4,590
Arrowtooth flounder	BSAI	788	36,873	0.021	13,600	291
Other flatfish	BSAI	12,145	92,428	0.131	76,019	9,989
Flathead sole	BSAI	3,030	87,975	0.034	85,000	2,927
Greenland turbot	AI	31	6,839	0.005	4,208	19
	BSAI	168	16,911	0.010	8,543	85
Other species	BSAI	3,551	65,925	0.054	21,930	1,181
Pacific Cod trawl[7]	BSAI	13,547	51,450	0.263	41,948	11,045
Pacific ocean perch[8]	BSAI	58	5,760	0.010	1,190	12
	Central AI	95	6,195	0.015	2,933	45
	Eastern AI	112	6,265	0.018	2,610	47
	Western AI	356	12,440	0.029	4,743	136
Other rockfish	AI	95	1,924	0.049	582	29
	BS	39	1,026	0.038	314	12
Rock sole	BSAI	14,753	202,107	0.073	85,000	6,205
Sablefish trawl[9]	AI	1	1,135	0.001	293	0
	BS	8	1,736	0.005	553	3
Sharpchin/Northern	AI	1,034	13,254	0.078	3,596	280
Squid	BSAI	7	3,670	0.002	1,675	3
Shortraker/Rougheye	AI	68	2,827	0.024	314	8
Other red rockfish	BS	75	3,034	0.025	227	6
Yellowfin sole	BSAI	123,003	527,000	0.233	187,000	43,646

[1] The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and also prohibits catcher/processors listed under paragraphs 1–20 of section 208(e) from exceeding the historical harvest percentages by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries (other than pollock) in 1995, 1996, and 1997.

[2] Amounts are in metric tons.
[3] For further definitions of target species see Table 1.
[4] The ratio is calculated by dividing the total catch by the TAC available at the end of the year (with the exception of Atka mackerel).
[5] The 1999 catch limit is calculated by multiplying the ratio by the 1999 proposed ITAC.
[6] In section 211(b)(2)(C) of the AFA, catcher/processors described in paragraphs 1–20 of section 208(e) are prohibited from harvesting Atka mackerel in excess of 11.5 percent of the available TAC in the Central AI area and 20 percent in the Western AI area. These listed catcher/processors are prohibited from harvesting Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea.
[7] For Pacific cod, 47 percent of the ITAC is allocated to trawl gear, and of that 50 percent is available for listed catcher/processors. Separate catcher/processor and catcher vessel allocations became effective in 1997. Therefore, due to an inconsistency in the data, only 1997 which has a similar allocation pattern as the present was used to calculate the historic ratio.
[8] Spatial apportionments to western, central, and eastern AI subareas began in 1996, therefore only data from 1996 and 1997 was used to calculate the historic ratio.
[9] 25 percent of the Sablefish ITAC is allocated to trawl in the AI subarea, 50 percent is allocated to trawl in the BS subarea.

Section 211(b)(2)(C) of the AFA prohibits listed catcher/processors from fishing for Atka mackerel in the Eastern AI and BS subarea and from exceeding 11.5 percent and 20 percent of the Atka mackerel TACs available in the Central and Western AI districts, respectively. Pending NMFS's approval of conservation measures to mitigate impacts of the Atka mackerel fishery on Steller sea lions (63 FR 60288, November 9, 1998) the listed catcher/processor harvest limitations for Atka mackerel would be subject to the proposed proportional restrictions on harvest inside and outside of critical habitat areas. As a result, the listed catcher/processors would be prohibited from trawling for the remainder of the year in critical habitat areas once 65 and 80 percent of the seasonal Atka mackerel harvest limitations established for the listed catcher/processors in the Western and Central AI districts respectively, is taken (Table 9).

TABLE 9.—PROPOSED ATKA MACKEREL SEASONAL AND CRITICAL HABITAT LIMITS FOR CATCHER/PROCESSOR VESSELS DESCRIBED UNDER SECTION 208(E) OF THE AFA [1] [2]

Subarea & component	Total TAC	ITAC for C/Ps	Seasonal apportionment [3]			
			A Season [4]		B Season [5]	
			Inside CH [6]	Total	Inside CH [6]	Total
Western Aleutian Islands (543)	27,000	4,590	1,492	2,295	1,492	2,295
Central Aleutian Islands (542)	22,400	2,190	876	1,095	876	1,095
Eastern AI District and BS subarea [7]	14,900					

[1] Amounts are in metric tons.
[2] Based on proposed regulations published in the FEDERAL REGISTER on November 9, 1998 (63 FR 60288).
[3] The seasonal apportionment of Atka mackerel in the open access fishery would be 50 percent in the A season and 50 percent in the B season. Listed catcher/processors would be limited to harvesting no more than 20 and 11.5 percent of the available TAC in the Western and Central AI subareas respectively (paragraph 211(b)(2)(C)).
[4] January 1 through April 15.
[5] September 1 through November 1.
[6] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (Table 1, Table 2, and Figure 4 of 50 CFR 226). In 1999, the percentage of TAC available for fishing inside critical habitat area is 65 percent in the Western AI and 80 percent in the Central AI. When these critical habitat allowances are reached, critical habitat areas would be closed to trawling for the remainder of the fishing season.
[7] The AFA (section 211(b)(2)(C)) prohibits listed catcher/processors from directed fishing for Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea.

NMFS intends to establish by emergency rule inseason authority necessary to manage the harvest of groundfish by listed catcher/processors so that the 1999 non-pollock harvest limits are not exceeded. Under the emergency rule authority, NMFS likely will limit directed fishing by the listed catcher/processors to the following non-pollock groundfish species: Atka mackerel, Pacific cod, and yellowfin sole. The proposed 1999 harvest limits for species other than pollock may not be sufficient to allow for both a directed fishery and necessary incidental catch requirements in other directed fisheries. NMFS intends to manage the listed catcher/processor harvest limitations conservatively, consistent with the intent of the AFA to limit the ability of these vessels to redistribute fishing effort into non-pollock fisheries in which they have not historically participated.

Section 211(b)(2)(B) of the AFA prohibits listed catcher/processors from harvesting more than a specified amount of each prohibited species in the BSAI. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the listed catcher/processors and those listed under section 209 during 1995, 1996, and 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 10. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, and then used to determine the proposed prohibited species harvest limits for listed catcher/processors in the 1999 non-pollock groundfish fisheries. Regulations at § 679.21(e)(7)(vii) and (e)(7)(viii) do not provide for fishery-specific management of the salmon bycatch limits. Therefore, NMFS is not including salmon catch limits for the listed catcher/processors during 1999.

PSC that is caught by listed catcher/processors participating in any non-pollock groundfish fishery listed in Table 8, shall accrue against the 1999 PSC limits for the listed catcher/processors as outlined in section 211(b)(2)(B) of the AFA (Table 10). The emergency interim rule being prepared by NMFS to manage the AFA harvest limitations specified for listed catcher/processors will provide authority to close directed fishing for groundfish to the listed catcher/processors once a

1999 PSC limitation listed in Table 10 is reached.

The Council at its November meeting recommended that prohibited species caught by listed catcher/processors and listed catcher vessels while fishing for pollock accrue against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories (see Table 6).

TABLE 10.—PROPOSED PSC LIMITS FOR CATCHER/PROCESSOR VESSELS DESCRIBED UNDER SECTION 208(E) OF THE AMERICAN FISHERIES ACT [1,2]

PSC species	1995–1997			1999 PSC available to trawl C/Ps	1999 C/P limit [4]
	PSC catch	Total PSC	ratio [3]		
Halibut mortality	955	11,325	0.084	3,492	294
Herring	62	5,137	0.012	1,685	20
Red king crab	7,641	473,750	0.016	185,000	2,984
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	693,750	97,372
Zone 2	406,860	8,100,000	0.050	1,737,150	87,256
C. opilio	2,323,731	15,139,178	0.153	4,162,500	638,907

[1] The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and also prohibits catcher/processors listed under paragraphs 1–20 of section 208(e) from exceeding the historical harvest percentages of prohibited species by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997.

[2] Amounts are in metric tons.

[3] The ratio is calculated by dividing the PSC catch by the total PSC available.

[4] The 1999 prohibited species catch limit is calculated by multiplying the historic ratio by the PSC available to listed catcher/processors in 1999.

Classification

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

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed and candidate species, including the Steller sea lion, and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, concludes that the pollock fisheries in the BSAI and the GOA jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures necessary to implement the RPAs will be discussed at the December Council meeting and will be implemented by NMFS through emergency rulemaking prior to the start of the 1999 BSAI pollock fishery.

NMFS has also initiated consultation on the effects of the 1999 BSAI groundfish fisheries on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. This consultation will be concluded prior to the start of fishing, under the 1999 interim specifications. Pending determinations under this consultation, NMFS may initiate emergency rulemaking to mitigate any adverse impacts resulting from the BSAI groundfish fisheries on listed and candidate species and designated critical habitat.

NMFS prepared an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (RFA) that describes the impact this proposed specification, if adopted, may have on small entities. This action is necessary to establish harvest limits for the BSAI groundfish fisheries for the 1999 fishing year. The groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR 679 that require NMFS, after consultation with the Council, to publish and solicit public comments on proposed annual TACs, PSC allowances, and seasonal allowances of the TACs. Based on the number of vessels that caught groundfish in 1996, the number of fixed gear and trawl catcher vessels expected to be operating as small entities in the 1999 BSAI groundfish fishery is 302. There are six small organizations, Community Development Quota (CDQ) groups, 56 small governmental jurisdictions with direct involvement in groundfish CDQ fisheries that are within the RFA definition of small entities. There are no recordkeeping and reporting requirements with this proposed action. NMFS is not aware of any other Federal rules which duplicate, overlap or conflict with the proposed specifications.

Significant alternatives that would minimize any significant economic impact of this action on small entities were considered. The establishment of differing compliance or reporting requirements or timetables, the use of performance rather than design standards, or exempting affected small entities from any part of this action would not be appropriate because of the nature of this action.

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

Dated: December 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–34545 Filed 12–24–98; 11:42 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8314–01; I.D. 121098B]

Groundfish Fishery of the Gulf of Alaska; Fisheries of the Exclusive Economic Zone; Gulf of Alaska; Proposed 1999 Harvest Specifications for Groundfish

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

ACTION: Proposed 1999 specifications for groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes 1999 harvest specifications, reserves, and

apportionments, for groundfish; Pacific halibut prohibited species catch (PSC) limits; and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 1999 fishing year. The intended effect of this action is to conserve and manage the groundfish resources in the GOA and to provide an opportunity for public participation in the annual groundfish specification process.

DATES: Comments must be received by January 25, 1999.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel.

The preliminary 1999 Stock Assessment and Fishery Evaluation (SAFE) Report, dated September 1998, is available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 that implement the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) govern the groundfish fisheries in the GOA. The North Pacific Fishery Management Council (Council) prepared the FMP, which was then approved by NMFS, under the Magnuson-Stevens Fishery Conservation and Management Act.

The FMP and implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20 (a)(1)(ii)). Regulations under § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on, proposed annual TACs, halibut PSC amounts, seasonal allowances of pollock, and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 to 6 of this document satisfy these requirements. For 1999, the sum of the proposed TAC amounts is 327,046 mt. Under 679.20(c)(3), NMFS will publish the final specifications for 1999 after considering: (1) comments received within the comment period (see DATES), and (2) consultations with the Council at its December 1998 meeting.

Regulations at § 679.20(c)(2)(i) provide that one-fourth of each proposed TAC and apportionment thereof (not including the reserves and the first seasonal allowance of pollock), one-fourth of the proposed halibut PSC amounts, and the proposed first seasonal allowance of pollock will become effective 0001 hours, Alaska local time (A.l.t.) January 1, on an interim basis and remain in effect until superseded by the final harvest specifications, which will be published in the **Federal Register**.

Prior to January 1, 1999, NMFS will publish, in the **Federal Register**, the interim TAC specifications and apportionments thereof for the 1999 fishing year. These interim specifications are scheduled to become effective 0001 hours, A.l.t. January 1, 1999, and remain in effect until superseded by the final 1999 harvest specifications.

Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed ABC and TAC for each species are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the GOA at their meetings in October 1998. This information was compiled by the Council's GOA Plan Team and is presented in the preliminary 1999 SAFE report for the GOA groundfish fisheries, dated September 1998. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The preliminary 1999 SAFE report will be updated to include new information collected during 1998. Revised stock assessments will be included in the final 1999 SAFE report.

Until updated information becomes available at its December 1998 meeting, the Council has recommended that the 1998 overfishing levels and ABC amounts be rolled over (Table 1).

Specification and Apportionment of TAC Amounts and Reserves

The Council adopted the AP's proposals for the 1999 GOA TAC amounts. The proposed 1999 TAC amounts equal the 1998 TAC amounts for each species. NMFS finds that the recommended proposed TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt.

The reserves for the GOA (under § 679.20(b)(2)) are 20 percent of the TAC amounts for pollock, Pacific cod, flatfish target species categories, and ''other species.'' The GOA groundfish TAC amounts have been fully utilized by the respective domestic target species categories since 1987, and NMFS expects the same to occur in 1999. NMFS proposes apportionment of all the reserves to the respective target species categories except Pacific cod. The Pacific cod fishery in the GOA has become increasingly difficult to manage. The increased number of participants, unexpected increases in harvest rates, and unexpected shifts to other management areas and target species in the GOA have resulted in overharvests of Pacific cod in some areas. Therefore, NMFS proposes initially to reserve 20 percent of the Pacific cod TACs in the GOA as a management buffer to prevent exceeding the Pacific cod TAC.

Table 1 lists the proposed 1999 ABC, TAC, initial TAC amounts (for Pacific cod only), overfishing levels, and initial apportionments of groundfish in the GOA. The apportionment of TAC amounts among fisheries is discussed in the following tables. These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, new information regarding the fishery, and consultation with the Council at its December 1998 meeting.

TABLE 1.—PROPOSED 1999 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are in metric tons]

Species	Area[1]	ABC	TAC	Initial TAC	Overfishing
Pollock[2]					
Shumagin	(610)	29,790	29,790		
Chirikof	(620)	50,045	50,045		
Kodiak	(630)	39,315	39,315		
Subtotal	W/C	119,150	119,150		170,500
	E	10,850	5,580		15,600
Total		130,000	124,730		186,100
Pacific cod[3]	W	27,260	23,170	18,536	
	C	49,080	41,720	33,376	
	E	1,560	1,170	936	
Total		77,900	66,060	52,848	141,000
Flatfish[4] (deep-water)	W	340	340		
	C	3,690	3,690		
	E	3,140	3,140		
Total		7,170	7,170		9,440
Rex sole[4]	W	1,190	1,190		
	C	5,490	5,490		
	E	2,470	2,470		
Total		9,150	9,150		11,920
Flathead sole	W	8,440	2,000		
	C	15,630	5,000		
	E	2,040	2,040		
Total		26,110	9,040		34,010
Flatfish[5] (shallow-water)	W	22,570	4,500		
	C	19,260	12,950		
	E	1,320	1,180		
Total		43,150	18,630		59,540
Arrowtooth flounder	W	33,010	5,000		
	C	149,640	25,000		
	E	25,690	5,000		
Total		208,340	35,000		295,970
Sablefish[6]	W	1,840	1,840		
	C	6,320	6,320		
	E	5,960	298	(Trawl only)	
	WYK		2,175	(H&L only)	
	SEO		3,487	(H&L only)	
Total		14,120	14,120		23,450
Pacific[7] ocean perch	W	1,810	1,810		2,550
	C	6,600	6,600		9,320
	E	4,410	2,366		6,220
Total		12,820	10,776		18,090
Short raker/rougheye[8]	W	160	160		
	C	970	970		
	E	460	460		
Total		1,590	1,590		2,740
Other rock-fish[9,10,11]	W	20	20		
	C	650	650		
	E	4,590	1,500		
Total		5,260	2,170		7,560
Northern Rockfish[11]	W	840	840		
	C	4,150	4,150		
	E	10	10		
Total		5,000	5,000		9,420
Pelagic shelf rockfish[12]	W	620	620		
	C	3,260	3,260		

TABLE 1.—PROPOSED 1999 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are in metric tons]

Species	Area[1]	ABC	TAC	Initial TAC	Overfishing
	E	1,000	1,000	.....	.....
Total	.....	4,880	4,880	.....	8,040
Thornyhead rockfish	W	250	250	.....	.....
	C	710	710	.....	.....
	E	1,040	1,040	.....	.....
Total	.....	2,000	2,000	.....	2,840
Demersal shelf rockfish[13]	SEO	560	560	.....	950
Atka mackerel	GW	600	600	.....	6,200
Other[14] species	GW	N/A[15]	15,570	.....	.....
Total[16]	.....	548,770	327,046	.....	817,270

1. Regulatory areas and districts are defined at § 679.2.
2. Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into three seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
3. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.
4. ''Deep water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.
5. ''Shallow water flatfish'' means flatfish not including ''deep water flatfish'', flathead sole, rex sole, or arrowtooth flounder.
6. Sablefish is allocated to trawl and hook-and-line gears (Table 2).
7. ''Pacific ocean perch'' means *Sebastes alutus.*
8. ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
9. ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means Slope rockfish.
10. ''Slope rockfish'' means *Sebastes aurora* (aurora), S. *melanostomus* (blackgill), *S. paucispinis* (bocaccio), S. *goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), S. *proriger* (redstripe), *S. zacentrus* (sharpchin), S. *jordani* (shortbelly), *S. brevispinis* (silvergrey), S. *diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and S. *reedi* (yellowmouth).
11. ''Northern rockfish'' means *Sebastes polyspinis.*
12. ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
13. ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S.* helvomaculatus (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
14. ''Other species'' means sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TACs of target species.
15. N/A means not applicable.
16. The total ABC is the sum of the ABCs for target species.

Proposed Apportionment of the Sablefish TAC Amounts to Users of Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TAC amounts for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, 80 percent of the TAC amounts is allocated to vessels using hook-and-line gear and 20 percent is allocated to vessels using trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to vessels using hook-and-line gear and 5 percent is assigned to vessels using trawl gear. Additionally, the Eastern Regulatory Area hook-and-line allocation of sablefish is apportioned to the West Yakutat and Southeast Outside Districts. In the Eastern Regulatory Area, the trawl allocation is not apportioned by district although regulations at 679.7(b) prohibit the use of trawl gear east of 140° W long. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other trawl target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the proposed 1999 sablefish TAC amounts between vessels using hook-and-line and trawl gears.

TABLE 2.—PROPOSED 1999 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons]

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

Proposed Apportionments of Pollock and Pacific Cod TAC Amounts

In the GOA, pollock is apportioned by area and season. Regulations at § 679.20(a)(5)(ii)(A) require that the TAC for pollock in the combined Western/Central (W/C) Regulatory Areas be apportioned among statistical areas Shumagin (610), Chirikof (620), and Kodiak (630) in proportion to known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Under regulations at § 679.20(a)(5)(ii)(B), the pollock TAC for the W/C Regulatory Areas is apportioned into three seasonal allowances of 25, 35, and 40 percent, respectively. As established under § 679.23(d)(2), the first, second, and third seasonal allowances of the W/C Regulatory Area pollock TAC amounts are available on January 1, June 1, and September 1, respectively. Within any fishing year, any unharvested amount of any seasonal allowance of pollock TAC is added in equal proportions to all subsequent seasonal allowances, resulting in a sum for each allowance not to exceed 150 percent of the initial seasonal allowance. Similarly, harvests in excess of a seasonal allowance of TAC are deducted in equal proportions from the remaining seasonal allowances of that fishing year. The Eastern Regulatory Area proposed TAC of 5,580 mt is not allocated among smaller areas or seasonally.

On October 29, 1998, NMFS published a proposed rule for public review and comment that would implement Amendment 51 to the FMP (63 FR 57996). Amendment 51 would allocate 100 percent of the pollock TAC and 90 percent of the Pacific cod TAC to vessels catching pollock and Pacific cod for processing by the inshore component. Ten percent of the Pacific cod TAC would be allocated to vessels catching Pacific cod for processing by the offshore component. The proposed distribution of pollock within the combined W/C Regulatory Areas is shown in Table 3, except that the allocation to the inshore and offshore components is not shown. Proposed inshore and offshore component allocations of the proposed 52,846 mt initial TAC for Pacific cod for each regulatory area are shown in Table 4.

Beginning in 1997, the Council recommended a GOA Pacific cod TAC that is 15 percent lower than the ABC for Pacific cod to account for removals from the state waters Pacific cod fishery. The Pacific cod TAC could be further reduced for 1999 pending State action to increase the state waters harvest of Pacific cod from 15 to 20 percent of the ABC.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES

Statistical area	Biomass percent	1999 ABC=TAC	Seasonal allowances		
			First (25%)	Second (35%)	Third (40%)
Shumagin (610)	25	29,790	7,450	10,425	11,915
Chirikof (620)	42	50,045	12,510	17,515	20,020
Kodiak (630)	33	39,315	9,830	13,760	15,725
Total	100	119,150	29,790	41,705	47,655

Note: Allowances. ABC for the W/C GOA is 119,150 metric tons (mt). Biomass distribution is based on 1996 survey data. TACs are equal to ABC. Pollock is allocated 100 percent to the inshore component. ABCs and TACs are rounded to the nearest 5 mt.

TABLE 4.—PROPOSED 1999 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	18,536	16,682	1,854
Central	33,376	30,038	3,338
Eastern	936	842	94
Total	52,848	47,562	5,286

"Other Species" TAC

The FMP specifies that amounts for the ''other species'' category are calculated as 5 percent of the combined TAC amounts for target species. The GOA-wide ''other species'' TAC is calculated as 15,570 mt, which is 5 percent of the sum of combined TAC amounts for the target species.

Proposed Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. At its October meeting, the Council recommended that NMFS re-establish the PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries, with 10 mt of the hook-and-line limit allocated to the demersal shelf rockfish (DSR) fishery in the Southeast Outside District and the remainder to the remaining hook-and-line fisheries. Regulations at § 679.21(d)(4) authorize exemption of specified nontrawl fisheries from the halibut PSC limit. As in 1996, 1997, and 1998, the Council has recommended that pot gear, and the hook-and-line sablefish fishery, be exempt from the nontrawl halibut limit for 1999. The Council has recommended these exemptions because the halibut bycatch mortality experienced in the pot gear fisheries is low (17 mt in 1996, 13 mt in 1997, and 13 mt in 1998) and because the halibut and sablefish Individual Fishing Quota (IFQ) program, implemented in 1995, allows retention of legal-sized halibut in the sablefish

fishery by persons holding IFQ permits for halibut.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal apportionments of halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing of the target groundfish industry.

The publication of the final 1998 groundfish and PSC specifications (63 FR 12027, March 12, 1998) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1998. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1999 season.

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

[Values are in metric tons]

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

Regulations at § 679.21(d)(3)(iii) authorize the apportionment of the trawl halibut PSC limit to a deep-water species fishery (comprising sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder) and a shallow-water species fishery (comprising pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''). The proposed apportionment for these two fishery complexes is presented in Table 6 and is unchanged from 1998.

TABLE 6.—PROPOSED 1999 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

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

Note: Pacific halibut PSC is not apportioned between shallow-water and deep-water fishery categories from October 1 through December 31.

The Council may recommend, or NMFS may make, some changes in the seasonal, gear type, and fishing-complex apportionments of halibut PSC limits for the final 1999 harvest specifications. NMFS considers the following types of information in setting halibut PSC limits as presented by, and summarized from, the preliminary 1999 SAFE Report, or from public comment and testimony.

1. Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is available from data collected by observers during 1998. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through October 17, 1998, is 1,992 mt, 292 mt, and 13 mt, respectively, for a total halibut mortality of 2,297 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the first, second, third, and fourth quarters of the 1998 fishing year. Trawling for the deep-water fishery complex was closed for the first quarter on March 10 (63 FR 12688, March 16, 1998), for the second quarter on April 21 (63 FR 20541, April 27, 1998), for the third quarter on July 28 (63 FR 40839, July 31, 1998), and for the fourth quarter on October 9 (63 FR 55341, October 15, 1998). The shallow-water fishery complex was closed for the second quarter on May 2 (63 FR 24984, May 6, 1998), for the third quarter on August 3 (63 FR 42281, August 7, 1998), and for the fourth quarter on October 9 (63 FR 55341, October 15, 1998). The amount of groundfish that might have been harvested, if halibut had not been seasonally limiting in 1998 is unknown. However, lacking market incentives, some amounts of groundfish will not be harvested, regardless of halibut PSC bycatch availability.

2. Expected Changes in Groundfish Stocks

The proposed 1999 ABC amounts for the species or species groups are unchanged from 1998 amounts.

3. Expected Changes in Groundfish Catch

The total of the proposed 1999 TAC amounts for the GOA is 327,046 mt, which represents 100 percent of the sum of TAC amounts for 1998 (327,046 mt).

4. Current Estimates of Halibut Biomass and Stock Condition

The most recent information on halibut biomass and stock condition may be found in the 1998 preliminary SAFE report, dated September 1998. New information will be incorporated in the final 1999 SAFE report.

The International Pacific Halibut Commission (IPHC) has added or subtracted the following information to the 1998 preliminary SAFE report relative to the November 1997 SAFE report: (1) Standard errors are reported for all years, using the methodology reviewed by the SSC at the June 1998 Council meeting; (2) Information for 1997 is reported for the first time; (3) Information for the 1995–1997 sablefish IFQ fisheries is not included due to inconsistencies found in the data during the preparation of the preliminary report.

5. Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 1999 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks.

6. Methods Available for, and Costs of, Reducing Halibut Bycatch in Groundfish Fisheries

Methods available for reducing halibut bycatch include: (1) Reducing halibut bycatch rates through the Vessel Incentive Program; (2) modifications to gear; (3) changes in groundfish fishing seasons; (4) individual transferable quota programs; and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with observer coverage requirements (50 CFR 679.50) are subject to the Vessel Incentive Program. This program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations (§ 679.24(b)(1)(ii)) specify requirements for tunnel openings for groundfish pots in order to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define pelagic trawl gear in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, see Authorized gear) and performance of the trawl gear in terms of crab bycatch (§ 679.7(b)(3)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(b)(2)). These measures are intended to reduce handling mortality, to increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and to possibly lower overall halibut bycatch mortality in groundfish fisheries.

The sablefish/halibut IFQ program (implemented in 1995) was intended, in part, to reduce the halibut discard mortality in the sablefish fishery.

NMFS and the Council will review the methods available for reducing halibut bycatch, as listed above, to determine their effectiveness, and will initiate changes as appropriate, in response to this review or to public testimony and comment.

Consistent with the goals and objectives of the FMP to reduce halibut bycatch while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 300 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but the Vessel Incentive Program, required modifications to gear, and implementation of the halibut/sablefish IFQ program are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

Halibut Discard Mortality Rates

The Council recommended that revised assumed halibut mortality rates developed by staff of the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1999 GOA groundfish fisheries. Most of the IPHC's assumed mortality rates were based on an average of discard mortality rates determined from NMFS-observer data collected during 1996 and 1997. For fisheries where a steady trend from 1993 to 1996 towards increasing or decreasing mortality rates was observed, the IPHC recommended using the most recent year's rate. Rates for 1995 and 1996 were lacking for some fisheries, so rates from the most recent years were used. Most of the assumed mortality rates recommended for 1999 differ slightly from those used in 1998. The recommended rates are lower than those used in 1998 for the longline targeted fisheries of Pacific cod and ''other species'' and remain the same for rockfish. The recommended rates for longline targeted fisheries range from 9 to 16 percent. The recommended rates for the trawl targeted fisheries are higher for midwater pollock, deep-water flatfish, flathead sole, and sablefish; are lower for rockfish, Pacific cod, rex sole, and ''other species'; and the same for shallow-water flatfish, bottom pollock, and Atka mackerel. The recommended rates for the trawl targeted fisheries range from 57 to 73 percent. The recommended 1999 rate of 6 percent for all pot targeted fisheries is lower than those used in 1998. The halibut mortality rates are listed in Table 7. The proposed mortality rates listed in Table 7 are subject to change after the Council considers an updated analysis on halibut mortality rates in the groundfish fisheries that IPHC staff are scheduled to present to the Council at the Council's December 1998 meeting.

TABLE 7.—PROPOSED 1999 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead]

Gear and target	Mortality rate
Hook-and-Line:	
Sablefish	

TABLE 7.—PROPOSED 1999 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA—Continued

[Listed values are percent of halibut bycatch assumed to be dead]

Gear and target	Mortality rate
Pacific cod	16
Rockfish	9
Other species	16
Trawl:	
Midwater pollock	76
Rockfish	64
Shallow-water flatfish	71
Pacific cod	66
Deep-water flatfish	66
Flathead sole	74
Rex sole	55
Bottom pollock	73
Atka mackerel	57
Sablefish	71
Other species	66
Pot:	
Pacific cod	6
Other species	6

Note: The hook-and-line sablefish mortality rate will be available for Council review at its December 1998 meeting.

Classification

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

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed and candidate species, including the Steller sea lion, and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, concludes that the pollock fisheries in the BSAI and the GOA jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures necessary to implement the RPAs will be discussed at the December Council meeting and will be implemented by NMFS through emergency rulemaking prior to the start of the 1999 GOA pollock fishery.

NMFS has also initiated consultation on the effects of the 1999 GOA groundfish fisheries on listed and candidate species, including the Steller sea lion and listed seabirds, and on designated critical habitat. This consultation will be concluded prior to the start of fishing on January 1, 1999, under the 1999 interim specifications. Pending determinations under this consultation, NMFS may initiate emergency rulemaking to mitigate any adverse impacts resulting from the GOA groundfish fisheries on listed and candidate species and designated critical habitat.

NMFS prepared an initial regulatory flexibility analysis that describes the impact these proposed specifications, if adopted, may have on small entities. This action is necessary to establish harvest limits for the GOA groundfish fisheries for the 1999 fishing year. The groundfish fishery in the GOA is governed by Federal regulations at 50 CFR 679 that require NMFS, after consultation with the Council, to publish and solicit public comments on proposed annual TACs, PSC allowances, and seasonal allowances of the TACs. Based on the number of vessels that caught groundfish in 1996, the estimated number of fixed gear and trawl catcher vessels expected to be operating as small entities in the 1999 GOA groundfish fishery is 1,492. There are no recordkeeping and reporting requirements with this proposed action. NMFS is not aware of any other Federal rules which duplicate, overlap or conflict with the proposed specifications.

Significant alternatives that would minimize any significant economic impact of this action on small entities were considered. The establishment of differing compliance or reporting requirements or timetables, the use of performance rather than design standards, or exempting affected small entities from any part of this action would not be appropriate because of the nature of this action.

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

Dated: December 24, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Notices

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Wednesday, December 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to a currently approved information collection. This information collection is used in support of loan deficiency payments authorized by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act), for rice, upland cotton, feed grains, wheat, and oilseeds.

DATES: Comments on this notice must be received on or before March 1, 1999 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Margaret Wright, Agricultural Program Specialist, Price Support Division, USDA, FSA, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–8481; e-mail: margaret__wright@wdc.fsa.usda.gov; or facsimile (202) 690–3307.

SUPPLEMENTARY INFORMATION:

Title: Loan Deficiency Payments.

OMB Control Number: 0560–0129.

Expiration Date of Approval: March 31, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The 1996 Act provides for loan deficiency payments to eligible producers with respect to eligible commodities. Forms required for requesting these payments are used by producers requesting a loan deficiency payment in lieu of a marketing assistance loan with respect to eligible production. The information collected is needed to determine loan deficiency payment quantities and payment amounts, verify producer and commodity eligibility, and to ensure that only eligible producers receive loan deficiency payments.

Producers requesting loan deficiency payments must provide specific data relative to the loan deficiency payment request. Forms included in this information collection package require various types of information including the farm number, type of commodity, quantity of commodity, storage location, and percent share of the commodity to determine eligibility. Producers must also agree to the terms and conditions contained in the loan deficiency payment application. The completed application is used by CCC when issuing a loan deficiency payment. Without this collection of information, CCC could not carry out the statutory loan deficiency payment provisions.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .38 hours per response.

Respondents: Producers.

Estimated Number of Respondents: 450,000.

Estimated Number of Responses per Respondent: 5.15.

Estimated Total Annual Burden on Respondents: 1,142,250 hours.

Proposed topics for comments include: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments must be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Margaret Wright, Agricultural Program Specialist, USDA, FSA, PSD, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–8481; e-mail: margaret__wright@wdc.fsa.usda.gov; or facsimile (202) 690–3307. Copies of the information collection may be obtained from Margaret Wright at the above address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on December 22, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–34522 Filed 12–29–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Morrison Creek, Medicine Bow/Routt National Forest, Routt County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare Environmental Impact Statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Medicine Bow/Routt National Forest, Yampa Ranger District will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects on a proposal to prepare and sell timber within the Morrison Creek Geographic area on the Yampa Ranger District. Estimated date for filing of the draft EIS is June 1999, followed by the final decision in September 1999. The proposal area is approximately 20 miles south of Steamboat Springs, Colorado, in sections 1, 2, 3, 4, 10, 11, 12, 13 and 14 of T.2N. R84 W.; sections 2, 3, 4, 6, 7, 17, 18, 19, 20, 21, 22, 27, 28 and 29 of T.2N. R.83W., and sections 28, 33 and 34 of T.3N. R.84W, Routt County, Colorado.

National Forest System (NFS) lands within the analysis area are allocated for multiple uses in the Revised Forest Land Management and Resource Plan (forest plan) for the Routt National Forest, approved in 1998. Lands affected by the proposed project are allocated as 5.11, 5.13 and 7.1 Management Areas. Forested lands within these

management areas are designated as suitable for timber production by the forest plan. Following is a summary of the themes for these management areas:

Management Area 5.11—General Forest and Rangelands—Forest Vegetation Emphasis: Areas are managed to provide wildlife habitat along with forest products, livestock forage, and recreation.

Management Area 5.13—Forest Products: Areas are managed to produce commercial wood products.

Management Area 7.1—Residential/Forest Interface: Area characterized by an interface between private lands and National Forest System lands in cooperative relationship landowners and other governments with jurisdiction.

Other management areas exist within the analysis area boundary (1.12, 1.32, 2.2, 5.41), but no forest management activities are proposed in these areas.

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis of this proposal and that interested or affected people may participate and contribute to the final decision. A public ''scoping'' meeting will be scheduled for early February, 1999 at the Yampa Ranger District office, 300 Roselawn, Yampa, Colorado. Contact the District Office for exact date and time for the meeting (970)–638–4516. The purpose of this meeting is to describe and discuss the proposed action and provide an opportunity for the public and agencies to raise issues that should be considered in the environmental analysis. Issues raised will help establish the scope of the environmental analysis and develop the range of alternatives to be considered. The Forest Service welcomes any public or agency comments on this proposal.

DATES: Written comments and suggestions on the Draft Environmental Impact Statement should be received on or before the 45 day period from the date of publication in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on this Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Please note that comments you make on this Draft Environmental Impact Statement will be regarded as public information.

ADDRESSES: The Responsible Official will be Jerry E. Schmidt, Forest Supervisor, Medicine Bow/Routt National Forest, 2468 Jackson Street, Laramie, Wyoming, 82070. Send written comments to Norman Wagoner, District Ranger, Yampa Ranger District, P.O. Box 7, Yampa, Colorado, 80483. Oral comments will be considered as well and can be made by calling (970) 638–4516.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered, however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 and 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such a confidentiality should be aware that, under the FOIA, confidentiality may be granted only in very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requestor of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the reuqestor that the comments may be resubmitted with or without name and address within 10 days.

FOR FURTHER INFORMATION CONTACT: Kent Foster, Project Coordinator, Yampa Ranger District, Phone: (970) 638–4516.

SUPPLEMENTARY INFORMATION: Proposed Action—The proposal is to manage approximately 1150 areas of mature sawtimber stands within the analysis area. The proposal includes the following activities: treatment of approximately 1150 acres by commercial timber sale including the following: 223 acres of clearcutting or overstory removal lodgepole pine; 609 acres of shelterwood and group selection treatments in lodgepole pine and spruce/fir stands; 128 acres of sanitation/salvage cutting in lodgepole pine and spruce fir; 190 areas of selection cuts in spruce/fir. Construction of approximately 14 miles of specified road, and approximately 2.0 miles of road reconstruction will be needed to access stands for treatments. In addition, treatment of approximately 50 areas to reduce fuel loading in areas close to private property of varied fuel types is proposed. These treatments may or may not be accomplished via commercial timber sale.

The timber sale(s) are intended to promote healthy stands of timber by reducing the risk of widespread mountain pine beatle outbreak, salvage dead and dying trees, maintain the aspen forest component, reduce risk of spruce bark beetle outbreak in the area, provide commercial wood products to industry, increase vegetative diversity in the area and will benefit wildlife species that use forested stands in an early successional stage. Clearcutting and/or overstory removal in lodgepole pine stands may create openings of larger than 40 acres in size. If this occurs, approval by the Regional Forester will be necessary after a 60-day public review.

Other Opportunities: Reduce sediment production on FDR 227.1 at the crossing of Morrison Creek; reduce fuel loading in areas near private lands and improvements; cooperatively

reduce infestations of noxious and undesirable weeds; prescribed burning to reduce fuel loading, regenerate aspen stands to maintain tree species diversity, and overall vegetative diversity.

Decisions to be Made: The Medicine Bow-Routt Supervisor will need to make an informed decision about the selection of one alternative among several. The issues and alternatives developed by the Forest Service interdisciplinary team members and public commentors must be analyzed and displayed clearly. From the project record alone, the Forest Supervisor and others who review the decision, must be able to fully understand the consequences of implementing the selected alternative.

Preliminary Issues: Roads constructed in support of the proposed timber sale(s) will reduce the current roadless character by approximately 2,600 acres within the Morrison Creek Geographic Area. The Morrison Creek Roadless Area (8,314 acres) will be reduced by approximately 700 acres to 7,614 acres. The Bushy Creek Roadless Area (11,443 acres) will be reduced by approximately 1,900 acres to 9,543 acres.

Options to road construction in these roadless areas include aerial skidding through the use of cable logging systems, helicopters and/or ground based forwarders. Acres treated using either of these methods could change based on the feasibility of each method.

This project is exempt from the proposed interim rule for roadless areas of the USDA Forest Service draft Forest Road Policy. The draft Forest Road Policy states ''where forest plan revisions are complet but not yet through the appeals process, the issue of roadless area management will be addressed through the forest planning and appeals process.'' The Record of Decision for the Routt National Forest Land and Resource Management Plan was signed on February 17, 1998.

Other Issues: Effects of timber harvest on wildlife habitat; effects of mountain pine beetle (MPB) on lodgepole pine stands moderately to highly susceptible to infestation; effects of drastic increase in lodgepole pine mortality as a result of MPB attack; public safety and health as a result of increased fuel loading due to MPB caused mortality of lodgepole pine; effects of increased motality of englemann spruce due to increased spruce bark beetle activity in stands of moderate to high risk to attack; conversion of the aspen cover type to mixed conifer forests due to succession and lack of natural disturbances such as fire; effects of timber harvest and road construction on watershed condition, including water quality and soil productivity.

Scope of the Analysis: This environmental analysis shall consider the environmental consequences of the proposed action, as well as alternatives reasonably implemented, while meeting the purpose and need for the action.

Date: November 9, 1998.

Jerry E. Schmidt,

Forest Supervisor.

[FR Doc. 98–34459 Filed 12–29–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833, A–201–824]

Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, at (202) 482–5288, or Gabriel Adler, at (202) 482–1442; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

Initiation of Investigations

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, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

The Petitions

On November 12, 1998, the Department received petitions filed in proper form by the Ranchers-Cattlemen Action Legal Foundation (R-Calf, referred to hereafter as ''the petitioner'').

The petitioner had filed similar petitions on October 1, 1998 (hereafter referred to as the ''original petitions''), but withdrew them on November 10, 1998. In refiling the petitions on November 12, 1998, the petitioner requested that the Department incorporate into the record all submissions made in connection with the original petitions. In addition to the original petitions, the documents incorporated by reference include the following: (1) a letter of October 2, 1998, clarifying the scope of the petitions; (2) letters dated October 15, 16, and 21, 1998, responding to the Department's requests for clarification of calculation methodologies in the petitions; and (3) letters dated October 14 and 22, and November 2, 6, 9, and 10, 1998, providing additional information with respect to industry support. The Department also incorporated into the record all submissions made by other interested parties in connection with the original petitions.[1]

After refiling the petitions, the petitioner made several additional filings with respect to industry support. The Department also received additional submissions on the issue of industry support from other interested parties.

The petitioner alleges that imports of live cattle from Canada and Mexico are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, a U.S. industry.

The Department finds that the petitioner has standing to file the petitions because it is an interested party as defined in section 771(9)(E) of the Act. Further, the Department's efforts with respect to its determination of industry support indicate that the petitions in fact have sufficient industry support (*see* discussion below).

Scope of Investigations

For purposes of these investigations, the product covered is all live cattle except imports of dairy cows for the production of milk for human consumption and purebred cattle specially imported for breeding purposes and other cattle specially imported for breeding purposes.

The merchandise subject to these investigations is classifiable as statistical reporting numbers under 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS), with the exception of 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for

[1] The Government of Mexico, the Government of Canada and the Government of Quebec raised issue with the refiling of these petitions. We note, however, that there is no statutory bar to refiling a petition which has been withdrawn. While the Department possesses the inherent authority to prevent a party from improperly manipulating its procedures, we have no reason to exercise that discretion in this case, particularly given the highly fragmented nature of the live cattle industry and the resulting complexity for this industry in expressing views on these petitions.

convenience and customs purposes, the written description of the merchandise is dispositive.

During our review of the petitions, we discussed with the petitioner whether the proposed scope was an accurate reflection of the product for which the domestic industry is seeking relief. We noted to the petitioner that the scope in the petitions appeared to exclude all purebred cattle. The petitioner subsequently notified the Department that only purebred cattle intended for breeding purposes should be excluded from the scope of the investigations. We revised the scope accordingly. The petitioner has since indicated that this revised scope accurately describes the product for which the domestic industry is seeking relief.

Consistent with the preamble to the new regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties, Countervailing Duties: Final Rule*, 62 FR 27296, 27323 (May 19, 1997). This period of scope consideration is intended to provide the Department the opportunity to amend the scope of the investigation, if warranted, such that the International Trade Commission (ITC) may be able to take the refined scope into account in defining the domestic like product for injury purposes. In addition, early amendment can partially alleviate the reporting burden on respondents and avoid suspension of liquidation and posting of securities on products of no interest to the petitioner. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**.

Determination of Industry Support for the Petitions

Section 732(c)(4)(A) of the Act requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports an antidumping petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Under section 732(c)(4)(D) of the Act, if the petitioner(s) account for more than 50 percent of the total production of the domestic like product, the Department is not required to poll the industry to determine the extent of industry support.

To determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[2]

Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petitions define the single domestic like product as live cattle (Bos taurus and Bos indicus) (including calves, stocker/yearlings, feeder steers and heifers, slaughter steers and heifers, and cull cows and bulls) which are raised and fed for the purpose of the production of beef. The domestic like product does not include purebred cattle that are used for breeding, unless and until these cattle are culled. The domestic like product also does not include dairy cows used to produce milk for human consumption.

No party has commented on the petitions' definition of domestic like product, and there is nothing on the record to indicate that this definition is inaccurate. Therefore, we have found no basis on which to reject the petitioner's representations that all cattle intended for slaughter should be included in the domestic like product. The domestic like product is functionally the same as the scope of the investigations, with the clarification that culled cattle are to be included. The Department has, therefore, adopted the like product definition set forth in the petitions, as clarified in the petitioner's letter of October 2, 1998.

With respect to the above-cited industry support requirements, our initial review of the production data in the petitions indicated that they did not account for more than 50 percent of the total production of the domestic like product. Therefore, in accordance with section 732(c)(4)(D) of the Act, we determined that it was necessary to poll or otherwise determine support for the petitions by the live cattle industry. Pursuant to section 732(c)(1)(B) of the Act, we extended the deadline for initiations until December 22, 1998, in order to allow sufficient time for this determination.

Due to, among other factors, the extraordinarily large number of individual producers of live cattle in the United States, as well as the lack of a comprehensive listing of such producers, we determined that it would not be feasible to conduct a traditional sampling of producers. We also determined that it would not be feasible to poll all individual producers. Instead, we examined more than 150 cattle and cattle-related associations and requested that they report the views of their cattle-producing members. Where individual producers contacted the Department directly to express their views, we included those views in our calculations after making adjustments to account for overlap of production between associations and their members. For a full description of the Department's industry support methodology, *see* memorandum from Susan Kuhbach and Gary Taverman to Richard W. Moreland, ''Live Cattle from Canada and Mexico: Determination of Industry Support'' (December 22, 1998).

The Department found that the domestic producers or workers supporting the petitions account for both (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Therefore, we find that there is sufficient industry support for the petitions.

Export Price and Normal Value

The petitioner calculated the export price and normal value as follows:

I. Canada

To determine the export price, the petitioner calculated a weighted-average price of imported Canadian cattle based

[2] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

on existing U.S. Census import data covering the period October 1997 through July 1998. These pricing data are on a free along side (FAS) basis (*i.e.*, the declared value of the cattle before loading onto freight carriers in Canada).

With respect to normal value, the petitioner obtained home market sales data from weekly Canadian price reports published by the USDA Agricultural Marketing Service. The petitioner alleged that these home market prices were below the cost of production (*i.e.*, the sum of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, and packing costs), and therefore they could not be used as the basis for normal value. Instead, the petitioner based normal value on constructed value (CV). The petitioner calculated the CV as the sum of the COM, SG&A, packing, and profit. To calculate profit, the petitioner relied on 1996 average profits for a variety of non-cattle livestock products, as compiled by Statistics Canada.

Our review of the petition's calculation of export price did not indicate the need to make revisions to that price. With respect to normal value, we first examined the petitioner's cost test methodology. We found that the petitioner had based the cost of production (COP) for four cattle types on actual cost data taken from a report published by CanFax, a division of the Canadian Cattlemen's Association. For these cattle types, we analyzed the sales-below-cost allegation, as explained below. With respect to the other nine cattle types for which sales information was provided, we did not rely on the petitioner's submitted cost data. Since we had actual cost data available for four cattle types, we disregarded the cost data for these nine cattle types and relied on the home market prices set forth in the petition.

We compared the home market sales prices of the four cattle types for which we had reliable cost data to the COP data supplied in the petition for each such cattle type, and found that home market prices in every instance were below the cost of production. This finding constitutes ''reasonable grounds to believe or suspect'' that sales of these foreign like products were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. *See Initiation of Cost Investigation*, below.

For these cattle types, we based normal value on CV. Except for a minor correction of exchange rates, we relied on the submitted COM and SG&A data for the four types of cattle in question. We revised the profit calculation to include only the profit on cattle livestock products as compiled by Statistics Canada.

II. Mexico

To determine the export price, the petitioner calculated a weighted-average price of imported Mexican cattle based on existing U.S. Census import data from June 1997 through July 1998. These pricing data are on a FAS basis, and are specific to the age and sex of the cattle.

With respect to normal value, the petitioner reported price data from three sources: (1) the Mexican government publication ''Current Situation and Outlook for Beef Production in Mexico''; (2) an ITC report containing quarterly 1996 prices for live steers in Mexico City and (3) a Mexican web site, the Daily Bulletin from the National Service of Market Information (SNIM), which contained August 19, 1996 prices broken down by region and age of cow. The petitioner claimed, however, that because these home market prices were below the cost of production they could not be used as the basis for normal value. Instead, the petitioner based normal value on CV. The petitioner calculated CV as the sum of the COM, SG&A, packing costs and profit. Except for profit, these figures were based on published USDA information on the costs of U.S. cow-calf operations in 1997. Cow-calf operation costs were considered to be those that most accurately reflected the cost of raising the calves and steers that constitute the majority of Mexican cattle exported to the United States. The petitioner adjusted the U.S. costs for known differences between costs incurred to produce live cattle in the United States and costs for producing the subject merchandise in Mexico. The petitioner was unable to obtain any information regarding the profitability of Mexican ranchers, and thus conservatively assumed profit to be zero.

Our review of the petition's calculation of export price did not indicate the need to make revisions to that price. With respect to normal value, we did not use the home market prices included in the petition because we found that these prices were not of products comparable to those used by the petitioner as the basis for export price. Instead, we reviewed the calculation of CV, and accepted the underlying cost data contained in the petition except in the following instances: (1) we eliminated imputed costs for operating capital, other non-land capital and land, because these amounts do not represent actual expenses; (2) we did not accept the inflation adjustment made by the petitioner, since the petition contained 1997 cost data and 1997–98 prices; (3) we converted U.S. dollars to pesos using the average 1997 exchange rate, as published by the Federal Reserve, and we used the same rate when converting pesos back to dollars for comparison to export prices; and (4) we revised the miscellaneous cost figure shown in the USDA statistics by applying the ratio of U.S. to Mexican feed costs.

Fair Value Comparison

Based on the data provided by the petitioner, as revised by the Department in the manner described above, we find that there is reason to believe that imports of live cattle from Canada and Mexico are being, or are likely to be, sold at less than fair value.

The margin calculations in the petitions, as revised, indicate dumping margins ranging from 6.42 percent to 10.72 percent for live cattle from Canada, and 15.48 to 64.49 percent for live cattle from Mexico.

If it becomes necessary at a later date to consider the petitions as a source of facts available under section 776 of the Act, we may review and, if necessary, further revise the margin calculations in the petitions.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than normal value. The allegations of injury and causation are supported by relevant evidence including USDA data and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist for Canada and for Mexico.

Initiation of Antidumping Investigations

We have examined the petitions on live cattle from Canada and Mexico and have found that they meet the requirements of section 732 of the Act, including the requirement concerning allegation of material injury or threat of material injury to the domestic producers of a domestic like product by reason of subject imports allegedly sold at less than fair value. Therefore, we are initiating antidumping duty investigations to determine whether imports of live cattle from Canada and

Mexico are being, or are likely to be, sold in the United States at less than fair value. Our preliminary determinations will be issued by May 11, 1999, unless the deadline for the determinations is extended.

Initiation of Cost Investigation

As explained above, the Department has found that there are ''reasonable grounds to believe or suspect'' that sales of live cattle from Canada were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Therefore, we are initiating a countrywide sales-below-cost investigation with respect to live cattle from Canada.

With respect to the allegation that there were sales of Mexican cattle below cost, we were unable to consider the cost allegation because the cost data provided in the petition were not on the same basis as the home market sales data, and thus could not be meaningfully compared. Therefore, we are not initiating a sales-below-cost investigation with respect to live cattle from Mexico at this time. However, we note that in accordance with the Department's regulations at 19 CFR 351.301(d)(2)(i), the petitioner will have until 20 days after the date on which the Department issues its antidumping questionnaire to file a country-wide cost allegation; alternatively, the petitioner will have 20 days after the filing of sales questionnaire responses by individual respondents to file company-specific cost allegations.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, copies of public versions of the petitions have been provided to the representatives of the Governments of Canada and Mexico.

International Trade Commission Notification

We have notified the ITC of our initiation of these investigations, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by January 18, 1999, whether there is a reasonable indication that imports of live cattle from Canada and Mexico are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in termination of the investigations; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–34468 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–834]

Initiation of Countervailing Duty Investigation of Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, James Breeden, or Stephanie Hoffman, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–0189, (202) 482–1174, or (202) 482-4198, respectively.

Initiation of Investigation

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 Department of Commerce (the Department) regulations are to the provisions codified at 19 CFR Part 351 (April 1998).

The Petition

On November 12, 1998, the Department of Commerce received a petition filed in proper form by the Ranchers-Cattlemen Action Legal Foundation (R-Calf, referred to hereafter as the ''petitioner'').

The petitioner had filed a similar petition on October 1, 1998 (hereafter referred to as the ''original petition''), but had withdrawn it on November 10, 1998. In refiling the petition on November 12, 1998, the petitioner requested that the Department incorporate into the record all submissions made in connection with the original petition. The Department granted this request, and also incorporated into the record all submissions made by other interested parties in connection with the original petition.[1]

After refiling the petition, the petitioner made several additional filings with respect to industry support. The Department also received additional submissions on the issue of industry support from other interested parties.

In accordance with section 702(b)(1) of the Act, the petitioner alleges that manufacturers, producers, or exporters of the subject merchandise in Canada receive countervailable subsidies within the meaning of section 701 of the Act.

The Department finds that the petitioner has standing to file the petition because it is an interested party as defined in section 771(9)(E) of the Act. Further, the Department's analysis underlying its determination of industry support indicates that the petition in fact has sufficient industry support (*see* discussion below).

Scope of the Investigation

For purposes of this investigation, the product covered is all live cattle except imports of dairy cows for the production of milk for human consumption and purebred cattle specially imported for breeding purposes and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable under subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States (HTSUS), with the exception of 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise is dispositive.

During our review of the petition, we discussed with the petitioner whether the proposed scope was an accurate reflection of the product for which the domestic industry is seeking relief. We noted to the petitioner that the scope in the petition appeared to exclude all purebred cattle. The petitioner subsequently notified the Department that only purebred cattle intended for breeding purposes should be excluded from the scope of the investigation. We revised the scope accordingly. The petitioner has since indicated that this revised scope accurately describes the product for which the domestic industry is seeking relief.

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[1] The Government of Canada and the Government of Quebec contested the refiling of the petition. We note, however, that there is no statutory bar to refiling a petition which has been withdrawn. While the Department possesses the inherent authority to prevent a party from improperly manipulating its procedures, we have no reason to exercise that discretion in this case, particularly given the highly fragmented nature of the live cattle industry and the resulting complexity for this industry in expressing views on the petition.

Consistent with the preamble to the new regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See *Antidumping Duties, Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). This period is intended to provide the Department with the opportunity to amend the scope of the investigation, if warranted, such that the International Trade Commission (ITC) may be able to take the revised scope into account in defining the domestic like product for injury purposes. In addition, early amendment can partially alleviate the reporting burden on respondents and avoid suspension of liquidation and posting of securities on products of no interest to the petitioner. The Department encourages all interested parties to submit such comments within twenty days after the date of publication of this notice in the **Federal Register**.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department invited representatives of the Canadian government for consultations with respect to the petition. These consultations were held on November 20, 1998. The Department also held consultations regarding the original petition with the Government of Canada on October 15, and November 4, 1998. We have incorporated all materials relating to those consultations into the administrative record of this proceeding.

Determination of Industry Support for the Petition

Section 702(c)(1)(A)(ii) of the Act requires that the Department determine, prior to the initiation of an investigation, that a minimum percentage of the domestic industry supports a countervailing duty petition. A petition meets these minimum requirements if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Under section 702(c)(4)(D) of the Act, if the petitioner(s) account for more than 50 percent of the total production of the domestic like product, the Department is not required to poll the industry to determine the extent of industry support.

To determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The ITC, which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[2]

Section 771(10) of the Act defines domestic like product as ''a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The petition defines the domestic like product as live cattle (Bos taurus and Bos indicus) (including calves, stocker/yearlings, feeder steers and heifers, slaughter steers and heifers, and cull cows and bulls) which are raised and fed for the purpose of the production of beef. The domestic like product does not include purebred cattle that are used for breeding, unless and until cattle are culled. The domestic like product also does not include dairy cows used to produce milk for human consumption.

No party has commented on the petition's definition of domestic like product, and there is nothing in the record to indicate that this definition is inaccurate. Therefore, we have found no basis on which to reject the petitioner's representation that all cattle intended for slaughter should be included in the domestic like product. The domestic like product is functionally the same as the scope of the investigations, with the clarification that culled cattle are to be included. The Department has, therefore, adopted the single like product definition set forth in the petition, as clarified in the petitioner's letter of October 2, 1998.

With respect to the above-cited industry support requirements, our initial review of the production data in the petition indicated that the petitioner (and supporters of the petition) did not account for more than 50 percent of the total production of the domestic like product. Therefore, in accordance with section 702(c)(4)(D) of the Act, we determined that it was necessary to poll or otherwise determine support for the petition by the live cattle industry. Pursuant to section 702(c)(1)(B), we extended the deadline for initiation until December 22, 1998, in order to allow sufficient time for this determination.

Due to, among other factors, the extraordinarily large number of individual producers of live cattle in the United States, as well as the lack of a comprehensive listing of such producers, we determined that it would not be feasible to conduct a traditional sampling of producers. We also determined that it would not be feasible to poll all individual producers. Instead, we contacted more than 150 cattle and cattle-related associations and requested that they report the views of their cattle-producing members. Where individual producers contacted the Department directly to express their views, we included those views in our calculations after making adjustments to account for overlap of production between associations and their members. For a full description of the Department's industry support methodology, *see* memorandum from Susan Kuhbach and Gary Taverman to Richard W. Moreland, ''Live Cattle from Canada and Mexico: Determination of Industry Support'' (December 22, 1998) (Domestic Support Memorandum).

The Department found that the domestic producers or workers supporting the petition account for both (1) at least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Therefore, we find that there is sufficient industry support for the petition. (*See* Domestic Support Memorandum.)

Injury Test

Because Canada is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from these countries materially injure, or threaten material injury to, a U.S. industry.

[2] *See Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition,* 56 FR 32376, 32380–81 (July 16, 1991).

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated subsidized imports of the subject merchandise. The allegations of injury and causation are supported by relevant evidence including United States Department of Agriculture (USDA) data and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation, and determined that these allegations are sufficiently supported by accurate and adequate evidence, and meet the statutory requirements for initiation. *See* ''Countervailing Duty Initiation Checklist for Canada.''

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for an imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to petitioners supporting the allegations.

Initiation of Countervailing Duty Investigation

The Department has examined the petition on live cattle from Canada and finds that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of live cattle from Canada receive subsidies.

We are including in our investigation the following programs alleged in the petition to have provided subsidies to producers and exporters of the subject merchandise in Canada:

1. *Canadian Wheat Board's Control of Feed Barley Exports*
2. *Ontario Feeder Cattle Loan Guarantee Program*
3. *Alberta Feeder Associations Guarantee Program*
4. *Saskatchewan Feeder Associations Loan Guarantee Program*
5. *Saskatchewan Breeder Associations Loan Guarantee Program*
6. *Manitoba Cattle Feeder Associations Loan Guarantee Program*
7. *British Columbia Livestock Feeder Loan Guarantee Program*
8. *Farm Improvement and Marketing Cooperative Loans Act (FIMCLA)*
9. *Northern Ontario Heritage Fund Corporation Agriculture Assistance*
10. *Net Income Stabilization Account*
11. *Saskatchewan Beef Development Fund*
12. *Ontario Livestock Programs for Purebred Dairy Cattle, Beef and Sheep Sales Assistance Policy/ Swine Assistance Policy*
13. *Canada-Alberta Beef Industry Development Fund*
14. *Manitoba Tripartite Cattle Stabilization/Industry Development Transition Fund*
15. *Canadian Adaptation and Rural Development (CARDS) Program in Saskatchewan*
16. *Quebec Farm Financing Act*
17. *Alberta Public Grazing Lands Improvement Program*
18. *Saskatchewan Crown Land Improvement Policy*
19. *Technology Innovation Program Under the Agri-Food Agreement*
20. *Feed Freight Assistance Adjustment Fund (FFAF)*
21. *Western Diversification Program*
22. *Ontario Livestock, Poultry and Honey Bee Protection Act*
23. *Ontario Bear Damage to Livestock Compensation Program*
24. *Ontario Rabies Indemnification Program*
25. *Quebec Farm Income Stabilization Insurance Program (FISI)*
26. *Ontario Artificial Insemination of Livestock Act*
27. *Saskatchewan Livestock and Horticultural Facilities Incentives Program*
28. *The Prairie Farm Rehabilitation Community Pasture Program*
29. *Provincial Crown Lands Program*
30. *Ontario Export Sales Aid Program*

We are not including in our investigation at this time the following programs alleged to be benefitting producers and exporters of the subject merchandise in Canada:

1. Beef Industry Development Fund

The petitioner alleges that cattle producers receive countervailable subsidies through monies provided by the government for the promotion and enhancement of the beef industry. Specifically, the petition alleges that expenditures for beef industry promotion also benefit cattle production under the Department's attribution policy, whereby subsidies paid to a corporate entity benefit related products within that company. According to the petitioner, beef promotion funds received by a corporate entity that operates feedlots should be investigated to determine whether benefits under the program benefit cattle production.

Despite the fact that the petitioner provides evidence of governmental assistance to the beef industry, the petition does not provide adequate information supporting its allegation of a benefit or financial contribution to the cattle industry. Rather, the petition refers to the Department's ''attribution'' policy, whereby benefits received for the production of an input pass onto the final product when received by the same corporate entity. *See* Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy, 61 FR 30287 (June 14, 1996).

In this case, the petitioner has argued that subsidies attributable to a final product benefit the production of an input, but has not offered any evidence to support this contention. Therefore, based upon the lack of supporting information in the petition that the Beef Industry Development Fund provides a financial contribution or benefit to the producers of the subject merchandise, we are not including this program in our investigation.

2. British Columbia Farm Product Industry Act

The petitioner alleges that cattle producers receive countervailable subsidies in the form of grants, loans and loan guarantees which are designed to encourage and assist the development and expansion of the agricultural industry in British Columbia. This program is allegedly *de facto* specific because British Columbia accounts for seven percent of the beef cows produced in Canada. However, the petition does not provide any further evidence or argumentation that the actual recipients are limited in number, that the cattle industry is a predominant user, that the cattle industry receives a disproportionately large amount of assistance, or that the government has exercised discretion in favoring one enterprise or industry over another. Furthermore, because this program is not limited to a particular enterprise or industry within British Colombia, this program does not qualify as a regional subsidy under section 771(5A)(D)(iv) of the Act. Therefore, based upon the lack of supporting information in the petition that the British Colombia Farm Product Industry Act is specific on either a *de jure, de facto* or regional basis, we are not including this program in our investigation.

3. Transition Programs for Red Meats

The petitioner alleges that countervailable subsidies were provided to cattle producers through a program titled, ''Transition Programs for Red Meats.'' As was alleged with the Beef Industry Development Fund (*see* above), the petitioner states that expenditures

on behalf of the beef industry also benefit cattle production under the Department's attribution approach. However, the petitioner does not provide adequate information supporting its allegation of a benefit or financial contribution either to cattle producers or the beef industry. Therefore, based upon the lack of supporting information in the petition that Transition Programs for Red Meats provides a financial contribution or benefit to the producers of the subject merchandise, we are not including this program in our investigation.

4. British Columbia Grazing Enhancement Special Account Act

The petitioner alleges that cattle producers receive countervailable benefits through the government's maintenance and enhancement of British Columbia's public range resources. This program is allegedly *de jure* specific because it benefits only farmers with grazing livestock. However, the petition does not provide any evidence or argumentation of a financial contribution being provided directly or indirectly to cattle producers. Specifically, there is no evidence of a direct transfer of funds, the foregoing or non-collection of revenue, the provision of goods and services (other than general infrastructure), or the purchase of goods. Therefore, based upon the lack of supporting information in the petition that the British Columbia Grazing Enhancement Special Account Act provides a financial contribution to the producers of live cattle, we are not including this program in our investigation.

Uncreditworthy Allegation

The petitioner alleges that the Canadian cattle industry is not creditworthy. The petitioner bases this allegation essentially on two arguments: (1) The industry is selling below cost; and, (2) a segment of the industry, and the industry as a whole, has been unprofitable.

Normally, the Department has required that any allegation of uncreditworthiness be made on a company-specific basis. (See, e.g., *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, (1989 Proposed Regulations*), 54 FR 23366, 23380.) It is the Department's policy to find a company uncreditworthy if information at the time of the government-provided loan in question indicates that the firm could not have obtained long-term commercial financing from conventional sources during the period when government loans were allegedly available to them. With respect to the analysis of uncreditworthiness allegations in a petition, it has been the Department's long-standing practice to employ a heightened threshold for uncreditworthiness allegations. Specifically, the petitioner must supply information establishing a reasonable basis to believe or suspect that a company is uncreditworthy, rather than simply providing reasonably available supporting information. (See *1989 Proposed Regulations,* 54 FR 23366, 23370, 23380 and *Countervailing Duties; Final Rule,* 63 FR 65348, 65368, 65409.)

Although it is the Department's policy to require uncreditworthiness allegations on a company-specific basis, we have also recognized that such a requirement may be unreasonable in cases in which the number of respondents is very large. (See *Final Affirmative Countervailing Duty Determination: Fresh and Chilled Atlantic Salmon From Norway,* 56 FR 7678, 7683 (February 25, 1991).) In the instant case, we accept the petitioner's claim that the large number of Canadian cattle producers makes it difficult to compile company-specific information with respect to a significant (or representative) number of producers. Therefore, we have analyzed whether the petitioner has provided a reasonable basis to believe or suspect that the Canadian cattle industry, in general, was unable to obtain long-term commercial financing from conventional sources.

As noted above, the petitioner has provided information indicating that the Canadian cattle industry has been selling below its cost and, arguably, has been unprofitable in recent years. Although relevant, this information does not directly address the issue of whether the industry was unable to obtain commercial long-term financing.[3] While we recognize that the Canadian cattle industry may be selling below cost and may have been unprofitable, it could be argued that such phenomena are not unusual for agricultural producers within an industry often subject to cyclical downturns. Furthermore, the petitioner has not provided specific evidence indicating that the current financial condition of the Canadian cattle industry will continue into the future or any other information directly supporting the conclusion that the industry has been unable to obtain long-term commercial financing.

[3] The only information that the petitioner has provided which may be directly relevant is a source note from a Canadian statistics report which indicates that interest costs are computed on the basis of monthly prime rates plus a premium. The petitioner alleges that this confirms that cattle producers can only get short-term financing because of their high risk of loss. Given that the report in question was intended to estimate a Canadian cattle producer's cost and that the use of a short-term interest rate appears to be an assumption rather than an empirically derived fact, we consider this information to be of little probative value.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act, copies of the public version of the petition have been provided to the representatives of the Government of Canada.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of our initiation of this investigation.

Preliminary Determination by the ITC

The ITC will determine by January 18, 1999, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of live cattle from Canada. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: December 22, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–34469 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121698A]

Magnuson-Stevens Act Provisions; Atlantic Swordfish Fishery; Atlantic Billfish Fisheries; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

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

ACTION: Applications for EFPs; request for comments.

SUMMARY: NMFS announces the receipt of applications for EFPs. If granted, these EFPs would authorize, until such time that the Highly Migratory Species fishery management plan (FMP) is effective, collections of a limited number of swordfish, billfish, and sharks from the large coastal, pelagic,

small coastal, and prohibited species groups from Federal waters in the Atlantic Ocean for the purposes of data collection and public display.

DATES: Written comments on NMFS' intent to issue such EFPs must be received on or before January 14, 1999.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The EFP applications and copies of the regulations under which EFPS are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600 concerning scientific research activity, exempted fishing, and exempted educational activity.

Issuance of EFPs is necessary because possession of five large coastal shark species is prohibited, possession of billfish on board commercial fishing vessels is prohibited, and because the commercial fisheries for swordfish and large coastal sharks may be closed for extended periods.

NMFS is seeking public comment on its intention to issue EFPs for the purpose of collecting biological samples under commercial observer programs. NMFS intends to issue an EFP to any NMFS or NMFS-approved observer to bring onboard and possess, for scientific research purposes (e.g., biological sampling, measurement, etc), any Atlantic swordfish, Atlantic shark, or Atlantic billfish provided the fish is a recaptured tagged fish, a dead fish prior to being brought onboard, or specifically authorized for sampling by the Southeast Fisheries Science Center or Northeast Fisheries Science Center. NMFS intends to authorize 500 Atlantic swordfish, 225 Atlantic billfish, and 575 Atlantic sharks under an EFP. In 1998, a total of one billfish was collected under an EFP.

NMFS is also seeking public comment on its intention to issue EFPs for the collection of restricted species of sharks for the purposes of public display. In 1998, a total of 13 requests for EFPs were received for a total collection of 565 sharks from the large coastal and prohibited species groups. To date, NMFS has received reports from two EFP recipients who collected a total of 8 sand tiger sharks under 1998 EFPs. NMFS has preliminarily determined that up to 500 sharks of the restricted shark species, of which a maximum of 75 sand tiger sharks, would be consistent with the current quota and the most recent environmental assessment prepared for this fishery. NMFS believes that this amount will have a minimal impact on the stock.

The proposed collections involve activities otherwise prohibited by regulations implementing the FMPs for Atlantic Swordfish, Atlantic Billfish, and Sharks of the Atlantic Ocean. The EFPs, if issued, would authorize recipients to fish for and to possess swordfish and large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

NMFS does not intend to issue EFPs for the entire 1999 calendar year, as has been customary, but intends to issue any EFPs from January 1, 1999, until 30 days after the final rule implementing the Final HMS FMP is effective. NMFS intends to send, via certified mail, notification that the final rule is effective and that EFP holders must reapply under the new procedures within 30 days.

A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–34452 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The members of the Review Panel and other participants will discuss matters related to the functions and operations of the Reveiw Panel, issues related to strategic planning and program evaluation, the status of on-going Sea Grant programs and initiatives, and recommendations on the application for designation of a Sea Grant College.

DATES: The ammounced meeting is scheduled during two days: January 7-8, 1999.

ADDRESSES: National Sea Grant College Program; 1315 East-West Highway, Room 4527; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald C. Baird, Director; National Sea Grant College Program; National Oceanic and Atmospheric Administration; 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910; (301) 713-2448.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced represeentation from academia, industry, state government, and citizen's groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94-461, 33 U.S.C. 1128) and advises the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, also the Administrator of NOAA, and the Director of the Natioanl Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is as follows:

Thursday, January 7, 1999

8:30–8:45—Opening of Meeting
8:45–9:00—Sea Grant Leadership Meeting Report
9:30–10:00—Sea Grant Association Report
10:00–10:30—Executive Committee Report
10:30–10:45—Break
10:45–12:00—Strategic Planning—''Theme Teams''
12:00–1:00—Lunch
1:00–1:45—NOAA and OAR Update
1:45–2:30—Congressional Update
2:30–3:00—Sea Grant Media Center
3:00–3:15—Break
3:15–4:30—National Sea Grant Office Update
4:30–5:00—Education Programs Update
5:00–5:15—Recognition Ceremony

Friday, January 8, 1999

8:30–8:45—Sea Grant Review Panel Election
8:45–10:00—Program Evaluation
10:00–10:15—Break
10:15–11:15—National Strategic Investments
11:15–Noon—Science Presentation
Noon–1:00—Lunch

1:00–1:45—Planning and Budget
1:45–2:30—SGRP Liaison Reports
2:30–3:00—Wrap-Up
3:00– —Adjourn

The meeting will be open to the Public.

Dated: December 23, 1998.

Louisa Koch,

Deputy Assistant Administrator for Oceanic and Atomospheric Research.

[FR Doc. 98–34542 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120998B]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Extension of Permits

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

ACTION: Extension of permits; request for comments.

SUMMARY: NMFS hereby extends the current permits for those fisheries that have negligible impacts on marine mammal stocks listed as threatened or endangered under the Endangered Species Act (ESA) for 6 months through June 30, 1999. This action allows the incidental, but not intentional, taking of such marine mammals in commercial fishing operations.

NMFS also requests comments on the criteria for determining whether such fisheries have a negligible impact on marine mammal stocks and on such other issues as whether authorizations should include provisions for taking that does not involve mortalities and/or serious injuries to marine mammals.

DATES: Effective January 1, 1999–June 30,1999. Comments on the criteria for issuance of permits will be accepted through February 16, 1999.

ADDRESSES: Send comments on the criteria for issuance of permits to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–2337.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, NMFS (301) 713–2322.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA) requires the authorization of the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the Endangered Species Act (ESA) in the course of commercial fishing operations if it is determined that (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with the provisions contained in section 118, and a take reduction plan has been developed or is being developed for such species or stock.

''Negligible impact'' as defined in 50 CFR 216.103 and as applied here is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 118 requires the registration of vessels in fisheries listed as either Category I or Category II on the annual list of commercial fisheries. A Category I fishery is a fishery with ''frequent incidental mortality and serious injury of marine mammals.'' A Category II fishery is a fishery with ''occasional incidental mortality and serious injury of marine mammals.'' Registration is not required for Category III fisheries, which have ''a remote likelihood of or no known incidental mortality or serious injury of marine mammals.'' The proposed list of fisheries for 1999 was published on August 11, 1998 (63 FR 42803).

On August 31, 1995 (60 FR 45399), NMFS issued interim final permits for those fisheries meeting the conditions under section 101(a)(5)(E) of the MMPA. As a starting point for making determinations, NMFS announced it would consider a total annual serious injury and mortality of not more than 10 percent of a threatened or endangered marine mammal stock's potential biological removal (PBR) level to be insignificant. PBR is defined in the MMPA as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.'' NMFS also announced that such a criterion would not be the only factor in evaluating whether a particular level of take would be considered negligible. Because population abundance and fishery-related mortality information used in calculation of PBR have varying degrees of uncertainty, NMFS determined that such factors as population trend and reliability of abundance and mortality estimates also should be considered.

Based on requirements of section 101(a)(5)(E) of the MMPA and these criteria, NMFS issued interim final permits to allow for the incidental, but not intentional, taking of three stocks of endangered or threatened marine mammals: (1) Humpback whale, central North Pacific stock; (2) Steller sea lion, eastern stock; and (3) Steller sea lion, western stock. Permits were issued for Category I and Category II fisheries taking animals from these stocks. Consistent with the provisions of section 101(a)(5)(E)(ii) of the MMPA, NMFS determined that permits were not required for Category III fisheries, which are not required to register under section 118 of the Act. The only requirement for Category III fisheries is that any serious injury or mortality be reported.

The MMPA provides that permits may be issued for a three year period. The current permits expire on December 31, 1998. The list of permitted fisheries was published on August 31, 1995 (60 FR 45401). Currently, none of the permitted fisheries has a serious injury and mortality level above 10 percent of PBR for listed species. Combined mortality from the western stock of Steller sea lions for all currently permitted fisheries is estimated to be 30.3, and ten percent of PBR is 35. Combined mortality from the eastern stock of Steller sea lions is estimated to be 13.8, and ten percent of PBR is 136. Combined mortality from the central north Pacific stock of humpback whales caused by currently permitted fisheries is 0.8 and ten percent of PBR is 0.74. Because the population is increasing and the estimated mortality is less than one whale per year, current permits could be reissued.

If existing criteria were to be used, permits could be reissued for a 3-year period for fisheries affecting all three stocks. NMFS views this as an opportunity to review existing criteria for the issuance of permits and to address issues that have arisen since the permits were first issued. Therefore, NMFS is extending the existing permits for a 6-month period and requesting public comment before issuing new permits. In accordance with the MMPA, opportunity will also be given to comment on the permits before they are issued.

NMFS requests comments on whether the current criteria for issuance of permits under section 101(a)(5)(E) of the MMPA are adequate or whether changes should be made. Currently, the method

for determinating negligible impact is based on 10 percent of PBR with other factors considered when appropriate. Some suggestions have been made including: the determination be based on recovery rate for the stock involved; some other percentage of PBR be used since PBR already contains a recovery factor; or the criteria be related to the zero mortality rate goal. In addition, NMFS invites comments on how cumulative impact of a number of different fisheries should affect permit issuance. This is not an issue with the existing permits, but it may be a consideration in the future.

A couple of issues have arisen since the first permits were issued, and NMFS invites comment on how they should be addressed. First, there is an issue as to whether the permits should apply to takings that do not involve serious injuries and mortalities. It is not absolutely clear whether Congress intended section 101(a)(5)(E) to apply to all types of takes. The use of the term ''taking'' in the introductory portion of the section does not appear to be limited to serious injuries and mortalities, but the criteria for issuance of a permit focus only on the impact of serious injuries and mortalities. There is a question as whether permits should cover both types of taking. In addition, to date, the agency has not considered issuing permits solely for takings that do not involve serious injuries or mortalities. NMFS invites comments on whether it should issue permits to cover such takings and, if so, what criteria should be used in making determinations concerning the issuance of such permits.

Second, NMFS request comments on whether it should or can issue permits covering less serious types of taking when permits cannot be issued to fisheries for takings involving serious injury or mortalities.

Issuance of Permits

Section 105(a)(5)(E) permits are hereby issued to all vessel owners registered in fisheries currently holding such permits. The permits will be effective on January 1, 1999, and will expire on June 30, 1999.

Permits may be suspended or revoked if the level of taking specified in the Incidental Take Statement prepared under section 7 of the ESA for each stock for which an incidental take permit is issued is exceeded.

Dated: December 23, 1998.

P. Michael Payne,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–34451 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Notice of Round Table Discussion on Proposed Reform of Patent Law and Operational Authority of the Patent and Trademark Office

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of meeting.

SUMMARY: The Patent and Trademark Office (PTO) announces a one-day, round table discussion on legislative proposals to reform patent law and the operational authority of the PTO. There will be approximately 10 to 20 round table participants. The participants may include Congressional representatives, Administration officials, and PTO customers invited by the PTO in consultation with groups representing large and small entities and independent inventors. Subject to space limitations, observers are invited to attend and, if time permits, make comments.

DATES: The round table discussion will be held on Friday, January 22, 1999, from 9:00 a.m. until 5:00 p.m. Individuals who would like to attend as observers must register by telephone between 12 noon Eastern time on January 14, 1999, and 12 noon January 20, 1999.

ADDRESSES: The round table discussion will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202. Individuals who would like to attend must register their name with Andrew Hirsch, Director of Congressional Affairs, by telephone at (703) 305–9300, or by facsimile transmission marked to his attention at (703) 305–8885.

FOR FURTHER INFORMATION CONTACT: Andrew Hirsch, Director of Congressional Affairs, by telephone at (703) 305–9300, or by facsimile transmission marked to his attention at (703) 305–8885.

SUPPLEMENTARY INFORMATION:

Background

The U.S. patent system plays a critical role in our dynamic economy. Inventors rely on a strong patent system to protect their creativity and investment as they bring their new technology and products to the marketplace. Inventors want their patent applications examined and patents issued and protected in the most efficient manner possible. While all PTO customers and other interested parties agree with those goals, they disagree as to what, if any, reforms are necessary to achieve those goals.

Efforts intended to reform and improve the U.S. patent system have intensified over the last two Congresses. However, legislation was not enacted because of disagreement over the specific proposals to reform patent law and the operational authority of the PTO.

Purpose of Round Table Discussion

This round table discussion is expected to begin a constructive dialogue among PTO customers and other interested parties on the desirability and the proper nature and scope of the various proposed legislative reforms to U.S. patent law and to the operational authority of the PTO. The PTO does not intend to use the group to arrive at any consensus. Accordingly, the PTO will host the round table discussion both to bring insights and experiences of diverse viewpoints to the agency and to find out where problems have been observed in the patent system before those problems harm the American economy. Attendees will be encouraged to supply the agency with general commentary, suggestions, and raw data.

Issues

Issues to be addressed by round table participants include, but are not limited to, the following:

1. Early publication of patent applications and provisional rights.
2. Reform of reexamination procedures.
3. Prior user rights.
4. Patent term restoration/extension provisions.
5. Recasting the PTO as a Government corporation and/or performance-based organization with improved operating and financial flexibilities.
6. Patent fee related issues.
7. Invention promotion fraud.

Registration of Public Observers

Because of space limitations, a limited number of public observers will be allowed to attend. Individuals who would like to attend must register their name with Andrew Hirsch, Director of Congressional Affairs, by telephone at (703) 305–9300, or by facsimile transmission marked to his attention at (703) 305–8885. Requests to register as

observers will be granted on a first-come, first-served basis.

Dated: December 23, 1998.

Q. Todd Dickinson,

Deputy Assistant Secretary of Commerce and Deputy Commissioner of Patents and Trademarks.

[FR Doc. 98–34494 Filed 12–29–98; 8:45 am]

BILLING CODE 3510–16–M

COMMODITY FUTURES TRADING COMMISSION

Coffee, Sugar & Cocoa Exchange, Inc. Petition for Exemption From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is granting the petition of the Coffee, Sugar & Cocoa Exchange, Inc. (''CSCE'' or ''Exchange'') for exemption from the prohibition against dual trading in its Cocoa futures contract.

DATES: This Order is effective December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Duane C. Andersen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st., N.W., Washington, DC 20581; telephone (202) 418–5490.

SUPPLEMENTARY INFORMATION: On October 19, 1993, the Coffee, Sugar & Cocoa Exchange, Inc., (''CSCE'' or ''Exchange'') submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Commodity Exchange Act (''Act'') and Regulation 155.5 for then-affected contract markets, including its Sugar #11 and Coffee ''C'' futures contracts.[1] The Exchange submitted an amended petition of March 21, 1997.[2]

Following its review of the March 21, 1997 petition the Commission found that the Exchange met all applicable statutory and regulatory standards for an exemption from the dual trading prohibition for its Sugar #11 futures contract market, the only affected contract market at the Exchange at that time. The Commission subsequently granted CSCE an unconditional exemption for that contract market by Order dated July 8, 1997.[3]

Subsequent to the publication of the Order, the Cocoa futures contract became an affected contract market. Consequently, on February 3, 1998, CSCE updated its petition to request that the Cocoa futures contract market be granted an exemption from the dual trading petition.[4] Notice of availability of the CSCE's updated petition was published in the **Federal Register** on March 4, 1998.[5]

Upon consideration of CSCE's petition, as supplemented,[6] and other data and analysis, including, but not limited to:

- Exchange audit trail test results reconciling imputed trade execution times to underlying trade documentation and verifying data on window sizes;
- Actions taken in response to the Commission's November 1994 *Report on Adult Trail Status and Re-Test;*
- Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities;
- Division of Trading and Markets Memoranda dated June 19, 1997, and December 4, 1998;

and upon review of each element of CSCE's trade monitoring system and of CSCE's trade monitoring as a whole, the Commission hereby finds that CSCE meets the standards for granting a dual trading exemption contained in Section 4j(a) of the Act as interpreted in Commission Regulation 155.5.[7]

Subject to CSCE's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds with respect to the Cocoa futures contract market that CSCE maintains a trade monitoring system which is capable of detecting and deterring, and is used on a regular basis to detect and to deter, all types of violations attributable to dual trading and, to the full extent feasible, all other violations involving the making of trades and execution of customer orders, as required by Section 5a(b) of the Act and Commission Regulation 155.5. The Commission further finds that CSCS's trade monitoring system includes audit trail and recordkeeping systems that satisfy the Act and regulations.[8]

With respect to each required component of the trade monitoring

[1] Affected contract market'' means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)99). See Section 4j(a)(4). Under Section 4j(a) of the Act and Regulation 155.5(b), the dual trading prohibition applies to each affected contract market. The Commission, therefore, must consider separately each such contract market.

[2] In its amended petition, the Exchange petitioned for dual trading exemptions for six contract markets: Coffee ''C'', Sugar #11 and Cocoa futures and futures option contracts.

[3] 62 FR 37563 (July 14, 1997).

[4] Under Regulation 155.5(c)(3), the effective date of a dual trading prohibition shall be no more than 30 calendar days after the current computation date for that contract market. The computation date for the Cocoa futures contract market was January 6, 1998. Thus, CSCE timely submitted its amended petition before February 5, 1998, the effective date of the dual trading prohibition in the newly affected contract market.

[5] 63 FR 10596 (March 4, 1998). The petition, as hereinafter discussed, includes the original 1993 petition, the 1997 amendment, and the 1998 update unless otherwise indicated.

[6] On December 22, 1997, the memberships of both the CSCE and the New York Cotton Exchange (''NYCE'') voted to merge and form the Board of Trade of the City of New York (''NYBT''). The merger was approved by the Commission on April 24, 1998, and initially closed on June 10, 1998. Data discussed herein generally focus on 1997, the period covered by the petition update, and precede the merger.

[7] The burden to provide that the exemption standards of the Act and Commission regulations are met rests exclusively on the contract market. The dual trading provisions set forth in Section 4j of the Act and the standards for trade monitoring systems provided in Section 5a(b) of the Act were enacted as part of the Futures Trading Practices Act of 1992 (''FTPA''). Pub. L. No. 102–546, 101, 106 Stat. 3590 (1992). The FTPA's legislative history makes clear that the burden to prove that the exemption standards are met rests upon the contract market. For instance, the 1992 House-Senate Conference Committee stated that ''a board of trade may satisfy the initial burden of demonstrating that each of its designated contract markets complies with trade monitoring system requirements of section 5a(b) of the Act, subject to requests for further information by the Commission by showing that it has maintained an ongoing record of compliance with those requirements.'' H.R. Conf. Rep. No. 102–978 at 53 (1992). The Conference Committee adopted the 1991 House Bill's (H.R. 707) dual trading provisions, with amendments relating to exemptions. *Id.* at 50. The 1991 Senate Bill (S. 207) similarly placed on the exchange the burden to demonstrate the ability of its systems to meet the standards and reiterated the view, previously expressed in the 1989 Senate Bill (S. 1729), that an exchange has the best access to its own records and therefore is in the best position to show that its systems are effective and satisfactory. S. Rep. No. 102–22 at 32 (1991); S. Rep. No. 101–191 at 39–40 (1989).

[8] Section 4j(a)(3) of the Act requires the Commission to exempt a contract market from the prohibition against dual trading unconditionally upon finding that the trade monitoring system in place at the contract market satisfies the requirements of Section 5a(b) with regard to violations attributable to dual trading at the contract market. If the trade monitoring system does not satisfy the requirements, Section 4j(a)(3) requires the Commission to deny the exemption or in the alternative to exempt a contract market from the prohibition against dual trading on stated conditions upon finding that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing and that corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards set forth in Section 5a(b). Regulation 155.5(b) prohibits floor brokers from dual trading in an affected contract market unless that contract market is exempted under Regulation 155.5(d).

system, the Commission finds as follows:

Physical Observation of Trading Areas—CSCS's trade monitoring system satisfies the requirements of Section 5a(b)(1)(A) in that CSCE maintains and executes as adequate program for physical observation of Exchange trading areas and integrates the information obtained from such observation into its compliance programs. The Exchange conducts daily floor surveillance during the open and close on all affected contract markets and at random times during each trading day. CSCE also performs floor surveillance when warranted by special market conditions, such as exceptional volatility or contract expirations. The Exchange uses information obtained from such surveillance in evaluating audit trail data and otherwise in executing its compliance programs.

Audit Trail System—The Exchange's trade monitoring system satisfies the audit trail standards of Section 5a(b)(1) of the Act and Regulation 155.5(d)(2)(ii), which provide that a contract market's audit trail system must be able, and must be used, to capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and outtrades) and otherwise satisfy the requirements of Regulation 1.35 and Section 5a(b)(3).

CSCE's audit trail system records ''reliably accurate'' trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5. Section 5a(b)(2) establishes that each exchange's audit trail system must, consistent with Commission regulations, reliably record accurate one-minute execution times of trades and sequence trades for each floor trader and broker. Section II of Appendix A to Regulation 155.5 states that the contract market must ''[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under Regulation 1.35(g) (within one minute, plus or minus, of execution) during four consecutive months within the 12-month period ending with the month preceding the submission of the exemption petition.[9] In addition, Section II provides that the contract market must ''[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses.''

Exchanges which assign one-minute trade execution times based upon an imputation algorithm, including CSCE, must demonstrate for each affected contract market that 90 percent or more of imputed trade times are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less (''90 percent performance standard''). Section 5a(b)(2), enacted, in 1992, codified the Regulation 1.35(g) requirement that ''[a]ctual times of execution shall be stated in increments of no more than one minute in length.'' Although strict application of the regulation would mandate that 100 percent of trade execution times meet that requirement, Regulation 155.5 requires that the exchange demonstrate that no less than 90 percent of trade execution times meet the Regulation 1.35(g) standard.[10]

CSCS has established for the Cocoa futures contract market that it satisfies the 90 percent performance standard—that is, 90 percent or more of imputed trade times, as assigned by the Exchange's trade timing system for Cocoa futures, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less.

Finally, the Exchange's trade monitoring system satisfies the standards of Section 5a(b)(3) of the Act, which imposed heightened audit trail standards, effective October 1995, requiring exchanges to capture for large-volume markets unalterable and continual times. The exchanges also must identify times independently through an automatic mechanism, or a means which captures similarly reliable times, and sequence trades in a precise manner, to the extent practicable.[11]

With respect to sequencing, CSCS's system is adequately precise to determine the sequence of all trades by each floor trader and the sequence of all trades by each floor broker. Consistent with the guidelines to Regulation 155.5 CSCE demonstrated the use of trade timing data in its surveillance systems for dual trading-related and other trading-related abuses.

One-Minute Execution Time Accuracy

CSCE's Audit Trail system (''ATS'') imputes a one-minute execution time for every trade. Trade times are imputed based upon time and sequencing data entered by both buyers and sellers for customer and proprietary trades, including trading card and line order entry sequence numbers, certain execution times required to be manually entered, time and sales data, and 30-minute bracket codes.[12] The Exchange endeavors to capture each transaction as a time and sales print. Additional trade data are input by members' clerks to the trade processing system, which matches trades for clearing. Based on these data, ATS uses a series of trade data comparisons to match both sides of a trade, to narrow further the time windows, and ultimately to assign an imputed execution time for the trade.[13]

[9] Appendix A further requires that the contract market provide a description of the trade time imputation algorithm, ''including how and why it reliably establishes the accuracy of the imputed trade execution times.'' In analyzing various audit trail test results for imputed timing systems, the Commission has articulated these standards in terms of verifiability of audit trail times.

[10] further, imputed timing systems do not capture actual trade execution times. Rather, these systems use various trade and timing data to form a timing window within which a trade most likely occurred and then apply computerized logic, known as an algorithm, to impute a time for that trade. That imputed time is a proxy for the actual trade execution time. Consequently, even where an exchange can demonstrate a trade timing window of two minutes or less, it is not possible to determine where within that window the trade occurred. Thus, a two-minute window for imputed trade times represents a further liberal construction of the Regulation 1.35(g) one-minute timing requirement. The Commission has made clear that an accurate and verifiable imputed trade execution time only can be demonstrated by a timing window that narrows the time assigned to a trade to a two-minute period within which the trade is most likely to have occurred.

[11] These provisions apply ''except to the extent the Commission determines that circumstances beyond the control of the contract market prevent compliance despite the contract market's affirmative good faith efforts to comply.''

[12] Exchange members are required to record manually the execution time of the first trade on the card, as well as any customer type indicator trades (trades for another member present on the floor or an account controlled by that other member) and cross trades. Members are encouraged to record manually the execution time of the fifth trade on each trading card.

CSCE does not use order ticket timestamp data in the processing logic for imputing times. Instead, the system attempts to obtain and use a time and sales print for all trades, extensive sequencing data (such as line numbers) and the various required manually entered times to impute trade execution times. Order ticket entry and exit times have been verified in the course of tests of the CSCE audit trail as being consistent with imputed times.

[13] As discussed in the Order dated July 7, 1998, CSCE planned to upgrade its ring reporter system through development and implementation of the Automated Sequential Trade Reporting System (''ASTRS''). With ASTRS, each ring reporter would use an upgraded handheld terminal and would be able to enter, in addition to the prince information currently entered to the extent practicable the selling member's acronym or short code. In December 1997 CSCE conducted a two-week pilot test that involved using ASTRS to impute trade times in parallel with the existing ATS system. The Exchange found that, in spite of the best efforts of the price reporters to capture and enter the selling broker's ID on all price reports, only a 60 percent capture rate was experienced and there was no means to verify accuracy. Consequently, CSCE has determined not to replace the ATS system, which the Exchange represents has a 93–95 percent accuracy rate, with ASTRS. Instead, the Exchange plans to use ASTRS on a periodic basis as a means to determine the accuracy rate, with ASTRS. Instead, the Exchange plans to use ASTRS on a

Continued

With respect to the accuracy of the ATS imputed trade execution times, all trade timing data obtained since 1994 indicate that CSCE met the 90 percent performance standard.

In order to determine the accuracy of the execution times, the audit trail tests designed and reviewed by the Commission and conducted by the Exchange in response to a November 23, 1994 Commission letter involved a determination of the consistency of imputed trade execution times with all underlying audit trail records and data. Based upon that process, trade timing accuracy and sequencing rates for CSCE's imputed system were computed.[14] In reviewing the results of the test designed to evaluate trade timing accuracy, Commission staff determined that 94 percent of CSCE's trade times satisfied the standard for consistency and underlying data and 91 percent of those trade times had timing windows of two minutes or less and thus could be verified.[15]

More recent data reflecting trade execution times in the Cocoa futures contract market confirms that the Exchange continues to meet the 90 percent performance standard. In order to verify the accuracy of ATS imputed trade execution times, Exchange staff conducted one ATS review in the Cocoa futures contract market during 1997.[16] The Exchange manually reconstructed, from the underlying sources of timing data, the 352 trades executed in bracket F on May 16, 1997, in the Cocoa futures market.[17]

Commission staff reviewed the data to determine whether CSCE met the 90 percent performance standard. The staff's review revealed that 322 of the 352 trades, or 91.5 percent, were assigned ATS times that met that standard—that is, 91.5 percent of the trades had imputed execution times that were within the same minute as the time and sales print or within the minutes after the time and sales print, a window of 120 second.[18] Since 1994, CSCE has demonstrated for the cocoa futures contract market that 90 percent or more of imputed trade times are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less.[19]

Other Components of CSCE's Audit Trail System

The Exchange also meets the remaining standards with respect to an audit trail system. With regard to unalterability, as mandated by Section 5a(b)(3)(A)(i) of the Act, trade records are unalterable, since trades are recorded on trading cards and order tickets in nonerasable ink and trade corrections are not permitted to obscure original data. With respect to the requirement that trade data be provided continually to the Exchange in accordance with Section 5a(b)(3)(A)(ii), trade data are provided continually to the Exchange in that members must enter data into the automated trade data entry and matching system by one-half hour after the end of the bracket period in which the trade was executed. CSCE's imputed timing system meets the Section 5a(b)(3)(A)(iii) standards for independence, to the extent practicable, in that the timing system uses data from sources other than the trader, as well as data provided by the trader, to derive times. CSCE also meets sequencing standards that in the Exchange requires that all trades, both proprietary and customer, be recorded in sequence on trading cards. Consistent with Section 5a(b)(1)(B), CSCE's trade entry and outtrade resolution programs capture essential data on cleared trades, unmatched trades, errors, and outtrades. Finally, CSCE enforces its audit trail requirements and integrates audit trail data into its surveillance system for dual trading-related abuses.

Broker Receipt Time

The Commission finds that it is not practicable at this time for CSCE to capture the time that each order is received by a floor broker for execution as is required, to the extent practicable as determined by the Commission by rule or order, by Section 5a(b)(3)(B) of the Act.[20]

Recordkeeping System—CSCE's trade monitoring system satisfies the requirements of Section 5a(b)(1)(B) in that CSCE maintains an adequate recordkeeping system that is capable of capturing essential data on the terms, participants, and sequence of transactions. The Exchange uses such information and information on violations of recordkeeping requirements on a consistent basis to bring appropriate disciplinary actions.

CSCE conducts trading card and order ticket reviews three times a year for a sample of customer orders and personal trades and uses information from these reviews to generate investigations. The documents reviewed constitute a ''representative sample'' of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading. Further, the sample is adequate to demonstrate compliance with all applicable rules and regulations.

Surveillance Systems and Disciplinary Actions—As required by Section 5a(b)(1) (C), (D) and (F), CSCE generally uses information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders. In addition, CSCE assesses meaningful penalties against violators and refers appropriate cases to the Commission.

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periodic basis as a means to determine the accuracy of the times imputed by ATS.

[14] To the extent that the time imputed by a computer algorithm was consistent with required trade documentation, time and sequence data and time and sales information for the subject trade and surrounding trades, that time was deemed accurate. If the imputed time fell within a two-minute level of precision as measured by the size of the final time window determined by the algorithm, that imputed time is considered to be verifiable, reliable, and precise.

[15] Audit Trail Report at 9, 22. The test sample included 400 trades randomly selected on a proportionate basis from the three futures contract markets which then had average daily volumes in excess of 8000 contracts: Coffee ''C'', Sugar #11, and Cocoa.

[16] CSCE computer data reflect that 96 percent of trades executed in the Cocoa futures contract market from September 1997 through December 1997 were assigned ATS execution times within one minute, plus or minus, of execution.

[17] The Exchange found that 99 percent of the trades executed in that bracket were assigned times within one minute, plus or minus, of execution. Commission staff subsequently independently reviewed the trades executed during that bracket and determined that 345 of the 352 trades, or 98 percent, were assigned times within one minute, plus or minus, of execution.

CSCE also completed one ATS review in the Sugar #11 futures contract market during 1997. The Exchange confirmed that 92 percent of the trades executed in bracket C in the Sugar #11 futures contract on November 4, 1997, were assigned times within one minute, plus or minus, of execution.

[18] Times and sales prints, but not ATS times, are captured in seconds. Thus, an execution time was considered to be within a two minute window as illustrated by the following: If the time and sales print was anywhere between 10:39:00 and 10:39:59, ATS times of 10:39 or 10:40 would fall within the two-minute window. In this example, the two minute window could not exceed the period from 10:39:00 to 10:40:59.

[19] For this purpose, the Commission is specifically relying upon the above-mentioned windows data calculated by Commission staff in 1994 and 1997. The other noted timing data were generated by the Exchange and are not expressly relied upon for this purpose, given that the data were calculated differently. However, the Exchange-generated data do tend to support the conclusion.

[20] Section 5a(b)(3)(B) codified existing requirements for capturing the times that an order is received on the floor and reported as executed and established a new requirement for capturing the time that an order is received by the floor broker. This Section requires a contract market to make a good faith effort, to the extent practicable as determined by the Commission, to ''record the time that each [customer's] order is received on the floor of the board of trade, is received by the floor broker for execution . . . and is reported from the floor of the board of trade as executed'' through an unalterable, continual, precise, independent, and automatic or similarly reliable means.

On a daily basis, CSCE's different management information system programs analyze trade data to detect possible instances of dual trading-related and other trading-related abuses. Systems are designed to permit subjection of all relevant trade data to these reviews. The computerized exception reports generated by the Exchange are designed to identify such suspicious trading activity as accommodation trading, including direct and indirect trading against a customer, direct and indirect trading ahead of a customer, and improper cross trading. Investigators can design customized exception reports to identify certain specific trading activity, to isolate suspicious trading patterns, to filter and to sort data within reports, and to expand review activities.

During 1997, the Exchange initiated 129 investigations and/or reviews into all types of possible abuses. Approximately 80 percent of the investigations opened and closed during that period were closed within the four-month standard set forth in Regulation 8.06. During 1997, the Exchange initiated 59 dual trading-related investigations as a result of its routine reviews of exception reports and referred 15 brokers and four firms to a disciplinary action committee. During that same period, CSCE assessed $14,500 in fines in 11 dual trading-related cases involving ten members and two member firms and ordered $928.00 in restitution in four of these cases.

Commitment of Resources—The Commission finds that CSCE meets the requirements of Section 5a(b)(1)(E) by committing sufficient resources for its trade monitoring system, including automating elements of such trade surveillance system, to be effective in detecting and deterring violations and by maintaining an adequate staff to investigate and to prosecute disciplinary actions. For fiscal year 1997, CSCE committed 25 personnel to the Compliance and Market Surveillance Departments and reported its total self-regulatory costs to be $4,320,500.[21] CSCE reported its volume for 1997 as 13,066,042 contracts and 2,200,567 trades.

Accordingly, on this date, the Commission HEREBY GRANTS CSCE's Petition for Exemption from the dual trading prohibition for trading in its Cocoa futures contract.

For this exemption to remain in effect, CSCE must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CSCE's program.

Unless otherwise specified, the provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. § 12e(b)(3)(B). If other CSCE contracts become affected contracts after the date of this Order, the Commission may expand this Order in response to an updated petition that includes those contracts.

It is so ordered.

Dated: December 23, 1998.

Catherine D. Dixon,

Assistant Secretary to the Commission.

Concurring Opinion of Commissioner Barbara P. Holum On the Order Granting a Dual Trading Exemption to the Coffee, Sugar & Cocoa Exchange, Inc.

I concur in the Commission's decision to grant a dual trading exemption to the Coffee, Sugar & Cocoa Exchange, Inc. (CSCE) for the Cocoa futures contract. CSCE has demonstrated that its trade monitoring system as a whole does detect and deter dual trading abuses. While I concur in the Commission's decision to grant CSCE a dual trading exemption, I think that it is important to clarify the reason for my decision. The trade monitoring system is comprised of five elements: physical observation of trading areas; audit trail system; recordkeeping and surveillance systems; disciplinary actions; and commitment of resources to effectively detect, deter and discipline dual trading violations. No single element should dictate granting, conditioning or denying an exemption, CSCE's trade monitoring system taken as a whole meets the relevant statutory and regulatory requirements for a dual trading exemption.

Dated: December 22, 1998.

Barbara P. Holum,

Commissioner.

[FR Doc. 98–34554 Filed 12–29–98; 8:45 am]

BILLING CODE 6351–01–M

[21] In June 1998 NYBT began to implement plans to combine and integrate the NYCE and CSCE compliance staffs into one department. This combined department is budgeted for 25 positions, including a Vice President of Compliance, two Senior Managers, four Managers, and a Staff Attorney. In July 1998 compliance staff members were physically relocated into one area. The Commission finds that the overall number of staff members assigned to compliance matters at NYBT is appropriate to the size of the NYBT and anticipated volume of trading and does not anticipate any material change in the performance of the trade monitoring system with respect to the Cocoa futures contract or with respect to the other affected contract markets at NYBT, Cotton No. 2 futures on NYCE and Sugar #11 futures on CSCE.

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Republication of Systems of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Republication and revision of systems of records

SUMMARY: The Consumer Product Safety Commission is republishing its Privacy Act systems of records with certain changes, additions, and deletions.

DATES: Systems with substantive changes will become effective on February 8, 1999, unless comments are receicved which require a contrary determination.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission. Washington, DC 20207,

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207, Telephone (301) 504–0908.

SUPPLEMENTARY INFOMATION: In accordance with Presidential Memorandum of May 14, 1998, the Consumer Product Safety Commission has reviewed its Privacy Act systems of records, and is republishing its notices of Privacy Act systems of records with necessary changes and additions. Addresses have been changed throughout to reflect the Commission's current location and organizational structure, and minor stylistic changes have been made to provide a more consistent format throughout. Additional changes and newly published systems are noted below.

CPSC–1, Injury and Incident Investigation Files. The name of the system has been changed from ''Ancient Reports (In-Depth)'' to reflect the inclusion of follow-up instigative reports of injuries and reported hazardous incidents as well as the coded data and one line narratives received from hospitals. ''Purpose(s)'' and ''Record Source'' sections have been added to conform to standard practice. The ''Storage'' section now refers generically to computer storage media, since some records are stored on optical computer disks for long-term storage. A sentence has been added to describe the

disposition of the original paper records. A sentence has been added to the ''Retrievability'' section to reflect the fact that records are also retrievable by product category. A sentence has been added to the ''Safeguards'' section to cover investigative reports that, unlike those received from hospitals, may contain personal data.

CPSC–2, Advisory Committee Records. The first sentence of the ''Routine uses'' section has been moved to a new ''Purpose(s) '' section.

CPSC–3, Claims. The first sentence of the ''Routine uses'' section has been moved to a new ''Purpose(s)'' section. The system location has been moved from the Office of Human Resources management to the Office of the General Counsel, and the system manager has been changed to the General Counsel.

CPSC–4, Hotline Database. A routine use has been added to permit the Commission to forward complete records to other governmental agencies having apparent jurisdiction over the products or hazards disclosed in the records. The Commission sometimes receives communications relating to matters outside the Commission's jurisdiction, such as those relating to automobiles. The new routine use would permit the Commission to forward those communications to the appropriate agency, such as the National Highway Transportation Administration, that does have jurisdiction. The ''retrievability'' section no longer excludes the possibility of retrieval by the name of a victim different from the person who contacts the Commission. The ''systems exempted'' section has been removed because the system is no longer used for purely statistical purposes—individual records may be used for accident causation analysis.

CPSC–5, Commissioners' Biographies. The ''Categories of individuals'' section has been narrowed. This system of records now includes information about Commissioners only. The first sentence of the ''Routine uses'' section has been moved to a new ''Purpose(s)'' section. The ''Routine uses'' section itself has been broadened to permit unrestricted disclosure, which is consistent with the fact that the information in the records has been furnished by the person to whom it pertains for the express purpose of facilitating dissemination.

CPSC–6, Office of the Inspector General Investigative Files. Routine use 11 has been revisited in light of the Debt Collection Improvement Act of 1966 to allow disclosure to the Department of the Treasury for the purpose of collecting delinquent debts.

CPSC–7, Enforcement and Investigation Files. The name of the system has been changed from ''Enforcement and Litigation Files'' to more accurately reflect the nature of the system. The ''Categories of Individuals'' section has been amended to include the individuals who may be named in the documents described in the ''Categories of Records'' section. This make the ''Categories of Individuals'' section consistent with the ''Categories of Records'' and ''Retrievability'' sections.

CPSC–8, Integrated Field System. The routine use relating to enforcement and litigation has been removed. Although these records indirectly support the Commission's enforcement activities, they are used only for internal management functions.

CPSC–9, General Counsel Tracking System. No changes.

CPSC–10, Procurement Files. In the ''Retention'' section the reference to destruction of computer records has been removed.

CPS–11, Employee Motor Vehicle Operators and Accident Report Records. This system has been deleted. The Commission no longer keeps records of this type. Records relating to claims against the Commission arising from motor vehicle accidents allegedly caused by employees in the course of duty are kept in the system called CPSC–3, Claims.

CPSC–12, Employee Outside Activity Notices. Additional authorities for the record system have been cited. The first routine use has been moved to a new ''Purpose(s)'' section. The retention period has been shortened in that the records are no longer kept after an employee leaves the agency

CPSC–13, Personnel Data System. Race and national origin and merit pool identifier are no longer kept and have been removed from ''Record categories.'' Information on individual vendors to the Commission, including employee who receive reimbursement for expenses, has been added to that section. Two new routine uses have been added: disclosure in connection with relevant litigation, and disclosure in connection with child support enforcement actions.

CPSC–14, Corrective Actions and Sample Tracking System. ''Sample Tracking'' was added to the system name to more accurately reflect the function of the system. Some organizational names were changed to reflect a reorganization of the Office of Compliance. The ''Categories of Individuals'' section was modified to include the contact person at the entity under investigation. The ''safeguards'' section was modified to show that certain employees in the field can access the system.

CPSC–15, Employee Relations Files. The former routine use number five has been moved to a new ''Purpose(s)'' section. A new routine use has been added to permit disclosure in relevant litigation without requiring a judicial subpoena, i.e., one actually signed by a judge. The retention period has been increased from two years to four years after an employee leaves.

CPSC–16, Equal Employment Opportunity (EEO) Counseling Files. The name of this system has been changed from ''Employee Upward Mobility Counseling Files'' to reflect a narrowed scope. It now includes only employees alleging discrimination. The two ''Categories'' sections and a new ''Purpose(s)'' section reflect this scope. The retention period has been changed to a fixed two years from ''until employee reaches goal.'' The ''Record source'' section has been changed to include witnesses as well as the employee himself or herself.

CPSC–17, Commissioned Officers Personal Data File. The record categories section has been shortened by deleting references to data items that are no longer recorded. The first three former routine uses have been moved to a new ''Purpose(s)'' section. A new routine use has been added to allow disclosure, upon request, to a state or federal agency in connection with hiring or other personnel activities.

CPSC–18, Procurement Integrity Records. No change.

CPSC–19, Office of Hazard Identification and Reduction Tracking System. This is a proposed new system that will help the Office of Hazard Identification and Reduction manage its projects.

CPSC–20, Personnel Security File. No change.

CPSC–21, Contractor Personnel Security File. This is a proposed new system that will store security investigation reports on contractor personnel who work onsite at the Consumer Product Safety Commission.

CPSC–22, CPSC Management Information System. References to obsolete computer punch cards have been removed.

CPSC–23, Health Unit Medical Records. This system has been deleted because the Commission no longer has a health unit and all records have been destroyed in accordance with ''Retention'' section of the former CPSC–23.

CPSC–24, Respirator Program Medical Reports. This is a new system of records to cover the medical reports on

employees whose job may require them to wear respirators. Occupational Health and Safety Regulations requires such persons to undergo periodic medical evaluations of their fitness to use respirators. The Public Health Service performs these evaluations for the Commission.

The Chairman of the Committee on Governmental Affairs of the Senate, the Chairman of the Committee on Government Reform and Oversight of the House of Represenatatives, and the Office of Management and Budget have been specifically notified of systems CPSC–1, CPSC–4, CPSC–5, CPSC–6, CPSC–7, CPSC–13, CPSC–14, CPSC–17, CPSC–19, CPSC–21, and CPSC–24, and have received a copy of this notice.

Dated: December 18, 1998.

Sadye Dunn,

Secretary, Consumer Product Safety Commission.

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Appendix I Regional Office Address
Appendix II Pertinent Record Systems of Other Agencies

CPSC–1

SYSTEM NAME:

CPSC–1, Injury Investigation Files.

SYSTEM LOCATION:

For computer records: Consumer Product Safety Commission, Directorate for Epidemiology and Health Sciences, 4330 East West Highway, Bethesda, MD 20814.

For paper records: Consumer Product Safety Commission, National Injury Information Clearinghouse, 4330 East West Highway, Bethesda, MD 20814.

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Victims of consumer product-related incidents or injuries on which specific epidemiologic data is needed in order to analyze and correct product hazards.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain demographic data on the person involved in an incident or injury, location of the incident, data on the incident, product and manufacturer identification, and a narrative description of the incident. They may also contain photographs and other documents relevant to the incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2054.

PURPOSE(S):

Records are used to support CPSC staff work in analyzing the incidence, severity, and causes of consumer product related injuries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records are used as a compilation of statistical and other information on product-related injuries to support CPSC staff work in analyzing the incidence and severity of product related injuries and to respond to Congressional inquiries and requests for information from private individuals and private and public organizations.

2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

3. Records may be provided to another Federal, State or local agency or authority engaged in activities relating to health, safety or consumer protection in accordance with section 29(e) of the Consumer Product Safety Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained as coded data and computer images on computer storage media. The original hard copy of investigation reports is maintained by the National Injury Information Clearinghouse, Office of Information Services, in file folders and as computer images. Hard copies are retired to the Washington National Records Center, Suitland, Maryland.

RETRIEVABILITY:

Records are retrievable by a coded number which indicates the date of assignment of the investigation, the Commission unit requesting the report, and a sequential number assigned to the investigation. Records are also retrievable by product category.

SAFEGUARDS:

Confidentiality of the identity of the accident victim and attending physician are guaranteed by the Consumer Product Safety Act, section 25(c) (15 U.S.C. 2074(c)) and, therefore, names do not appear in the coded computer record and can not be used for retrieval. Hard copies and computer images of investigation reports are redacted as necessary to remove identifying information before they are disclosed outside the Commission.

RETENTION AND DISPOSAL:

Hard copy records are maintained for a period of up to 10 years on-site, subject to change in Commission policy. They are then sent to the Washington National Records Center in Suitland, Maryland and destroyed after 30 years. Computer records are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Injury Information Clearinghouse, Office of Information Services, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided by victims and their families, witnesses, public safety and law enforcement agencies, and others having knowledge of circumstances of incidents or injuries.

CPSC–2

SYSTEM NAME:

CPSC–2, Advisory Committee Records.

SYSTEM LOCATION:

Consumer Product Safety Commission, Directorate for Epidemiology and Health Sciences, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals seeking or nominated for or selected for membership on CPSC Advisory Committees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of applicants contain an individual's name, address, personal history and qualifications, any correspondence with the individual and any Commission memoranda relating to the selection of the individual. Records of members additionally contain information about the member's financial compensation and Commission documents relating to the individual's service as a member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2077 and 15 U.S.C. 1275.

PURPOSE(S):

These records are used to select candidates for filling vacancies on advisory committees and to administer the operation of the committees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of committee and then by name of applicant or member.

SAFEGUARDS:

Records are maintained in file cabinets in a secured area.

RETENTION AND DISPOSAL:

Applicants' and nominees' records are retained until new applications are solicited or committee is terminated and then destroyed. Members' records are retained for 2 years after termination of membership and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Committee Management Officer, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided by applicants, nominees for, and members of Advisory Committees and by Commission staff.

CPSC–3

SYSTEM NAMES:

CPSC–3, Claims.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of the General Counsel, 4430 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPCS employees sustaining personal property damage or loss incident to service; CPSC employees involved in situations where personal injury or property damage to others results from wrongful or negligent act or omission of employee acting within scope of employment; claimants sustaining injury or property damage due to activities of CPSC or its employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain claims for money damages, accident and investigative reports, and correspondence and other documents concerning claims or potential claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3721; 28 U.S.C. 1346(b), 2672.

PURPOSE(S):

(a) for processing claims and litigation under the Federal Tort Claims Act or the Military Personnel and Civilian Employee's Claims Act; (b) For preparation of reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Information from a record in this system of records may be disclosed to a person or entity having a legal interest in the claim.

3. Information may be disclosed to Federal, state, or local law authorities, court authorities, administrative authorities, for use in connection with civil, criminal, administrative, and regulatory proceedings and actions relating to the claim.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of individual claimant.

SAFEGUARDS:

Records are maintained in a file cabinet in a secured area. Access to such area is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained up to six years after case is closed. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided by (1) the individual to whom the record pertains (2) CPSC and/or employees (3) affidavits, statements, or testimony of witnesses (4) official documents relating to the claim (5) correspondence from organizations or persons involved.

CPSC–4

SYSTEM NAME:

CPSC–4, Hotline Database.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Information Systems, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who contact the Consumer Product Safety Commission to report consumer product associated injuries, illnesses, deaths, incidents, or perceived hazards associated with consumer products, or request information about such matters; and other persons identified by the reporting persons as victims of consumer product associated incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about accidents, injuries, illnesses, death, and suspected safety hazards associated with consumer products. The records contain free form narratives, and a variety of fields dedicated to specific data about different types of products or incidents. Records contain personal information such as the name, address, and telephone number of the person submitting the information and in some cases of the victim, if different.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 5 of the Consumer Product Safety Act, 15 U.S.C. 2054.

PURPOSE(S):

To collect data on hazards, defects, injuries, illnesses, and deaths associated with consumer products; to respond to inquiries from the public; to record personal information to permit further interaction with persons submitting data or persons named by those who submit data; to further public safety by helping determine the cause of injuries and deaths associated with consumer products.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records are disclosed to contractor personnel who operate the Consumer Product Safety Commission's Hotline and who enter data into the database.

2. Copies of records are mailed to callers for their verification of the information provided.

3. Copies of records may be sent to sources of consumer products identified in the records (e.g., manufacturers, distributors, or retailers) and may be distributed to others, but any personal identifying information is deleted before such disclosure unless permission to disclose such personal identifying information has been explicitly granted in writing by the person in question.

4. Copies of records may be sent to other governmental agencies having apparent jurisdiction over the products or hazards disclosed in a record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer database management system on a local and wide area network. Paper copies of individual computer records are made by the Hotline staff and are stored by month and by name of the person who contacted the Hotline. Other paper copies are made available to Commission staff but are not stored by name or other individual identifier.

RETRIEVABILITY:

Records are retrievable by a variety of fields, including the name of the person who submitted the information.

SAFEGUARDS:

Access to the computer records requires the use of two passwords: one to access the agency's computer network and another to access the database. Access is limited to those with a particular need to know the information—selected Commission employees and the contractor employees who operate the Hotline.

RETENTION AND DISPOSAL:

Computer records are maintained indefinitely. Paper records are kept for 10 years and then transferred to a Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Hotline Project Officer, Communication Services Division, Office of Information Services, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is initially supplied by persons who contact the Commission. The Commission may solicit additional or verifying information from those persons or from other persons who were identified as victims.

CPSC–5

SYSTEM NAME:

CPSC–5, Commissioners' Biographies.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Information and Public Affairs, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC Commissioners who have submitted biographical information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This record contains a brief statement of information relating to educational and professional background and present position and responsibilities within the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2051–83.

PURPOSE(S):

This information is furnished to the public media, including the Internet, in connection with Commissioners' activities and Commissioners' participation in conferences, meetings and other functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to anyone who makes a request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed alphabetically by name of the Commissioner.

SAFEGUARDS:

Records are maintained in secured areas.

RETENTION AND DISPOSAL:

Records are maintained until the Commissioner leaves the agency. Disposal is by normal methods.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Information and Public Affairs, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in this record is furnished by the employee to whom it pertains.

CPSC–6

SYSTEM NAME:

CPSC–6, Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or have been the subject of an Office of he Inspector General investigation relating to the programs and operations of the Commission including, but not limited to, current and former employees, contractor or subcontractor personnel, as well as other individuals whose actions affect the Commission, its programs, or its operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records relevant to an Inspector General investigation including correspondence; internal staff memoranda; copies of subpoenas issued during the investigation; affidavits, statements from witnesses, transcripts of any testimony taken in the investigation and accompanying exhibits; documents and records obtained during the investigation; interview notes and working papers of the Office of the Inspector General's staff; opening reports, progress reports, and final reports containing findings and recommendations of appropriate action; and other investigatory information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, as amended, 5 U.S.C. App.

PURPOSE(S):

This system is maintained for the purposes of conducting and documenting investigations conducted by the Office of the Inspector General, or other investigative agencies assisting the Office of the Inspector General, regarding CPSC personnel, programs, and operations; documenting the outcome of Inspector General reviews of allegations and complaints received by the Office of the Inspector General concerning CPSC personnel, programs, and operations; aiding in the prosecution or imposition of criminal, civil, or administrative sanctions against subjects of Inspector General investigations; reporting the results of investigations to the Chairman of the Commission and CPSC managers for their use in operating and evaluating their programs; and compiling information necessary to fulfill any reporting requirements by the Inspector General Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in the system may be disclosed:

1. To an appropriate governmental agency, whether federal, state, or local, where there is an indication of a violation or a potential violation of law, regulation, or order, whether civil or criminal in nature, which that agency is charged with investigating or enforcing.

2. To federal, state, or local governmental authorities in order to obtain information or records relevant to an Inspector General investigation.

3. To federal, state or local governmental authorities maintaining civil, criminal, or other relevant information, such as current licenses, to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the award of a contract, or the issuance of a grant or other benefit.

4. To federal, state, or local governmental authorities in response to their request in connection with the hiring or retention of an employee, disciplinary or other administrative action concerning an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the award of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

5. To non-governmental parties where those parties may have information the Office of the Inspector General seeks to obtain in connection with an investigation.

6. To independent auditors or other private firms with which the Office of the Inspector General has contracted to carry out an independent audit or investigation, or to collate, aggregate, or otherwise refine data collected in the system or records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

7. To the Office of the General Counsel of the Commission, the Department of Justice, or other law enforcement authorities, for disclosure by such parties to extent relevant and necessary, when the defendant in litigation is:

a. The Commission, any component of the Commission, or any employee of the Commission acting in his or her offical capacity;

b. The United States where the litigation, if successful, is likely to affect the operations of the Commission; or

c. Any Commission employee sued in his or her individual capacity where the Department of Justice and/or the Office of the General Counsel of the Commission agree to represent such employee.

8. To a court or adjudicative body where the Commission is a party to the litigation or has an interest in such litigation, the records are relevant and necessary to the litigation, and disclosure of the records is compatible with the purpose for which the records were collected.

9. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual, but only to the extent the record would be legally accessible to that individual.

10. To other Commission employees in the course of employee disciplinary proceedings.

11. To the Department of the Treasury or debt collection agencies for the purpose of collecting delinquent debts owed to the Commission, as authorized by the Debt Collection Act 31 U.S.C. 3718, and subject to applicable Privacy Act safeguards.

12. To the Office of Personnel Management, the Office of Government Ethics, the Merit Systems Protection Board, the Office of the Special Counsel, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority or its General Counsel, those records or portions thereof which are relevant and necessary to carrying out their authorized functions.

13. To any direct recipient of federal funds, such as a contractor, where information in a record reflects serious inadequacies by the recipient's personnel and disclosure of the record is for purpose of permitting the recipient to take corrective action beneficial to the Government.

14. To a grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosure may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy or on computer diskettes.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Paper records and computer diskettes are kept in limited access areas during duty hours and in safe-type file cabinets in locked offices at all other times. Highly sensitive records are created on a personal computer, stored on paper or diskettes, and then deleted from computer storage. Less sensitive records may be created and stored in password-protected computer files.

RETENTION AND DISPOSAL:

The Investigative Files are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of the Inspector General, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURES:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the Commission; records of other entities such as federal, foreign, state or local bodies and law enforcement agencies; documents; correspondence relating to litigation; transcripts of testimony; and miscellaneous other sources.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system of records which fall within 5 U.S.C. 552a(k)(2) (investigatory materials compiled for law enforcement purposes) and 5 U.S.C. 522a(k)(5) (investigatory materials solely compiled for suitability determinations) are exempt from 5 U.S.C. 552a(c)(3), (mandatory accounting of disclosures); 5 U.S.C. 552a(d), (access by individuals to records that pertain to them); 5 U.S.C. 552a(e)(1), (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose); 5 U.S.C. 552a(e)(4)(G), (mandatory procedures to notify individuals of the existence of records pertaining to them); 5 U.S.C. 552a(e)(4)(H), (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to them); 5 U.S.C. 552a(e)(4)(I), (mandatory disclosure of record source categories); and the Commission's regulations in 16 CFR part 1014 which implement these statutory provisions.

CPSC–7

SYSTEM NAME:

CPSC–7, Enforcement and Investigation Files.

SYSTEM LOCATION:

Office of Compliance, and Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are the authors or recipients of, or mentioned in, documents received by, or generated by, the Consumer Product Safety Commission in preparation for, or the conduct of, potential or actual administrative or judicial enforcement actions, and individuals mentioned in such documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Memoranda, correspondence, test reports, injury reports, notes, and any other documents relating to the preparation for, or conduct of, potential or actual administrative or judicial enforcement actions. The materials may contain personal information as well as purely legal and technical information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 1194, 1195, 1196, 1264, 1265, 2069, 2070.

PURPOSE(S):

These files are used by Commission attorneys, compliance officers and supporting technical staff investigating product hazards and enforcing the Commission's statutory authority.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. These records may be cited and quoted in the course of enforcement negotiations, and in pleadings filed with an adjudicative body and served on opposing counsel.

2. They may be disclosed to the Department of Justice in connection with the conduct of litigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders or computer files or both.

RETRIEVABILITY:

Paper records may be filed by and retrievable by name of the document's author or addressee or by other indicia. Computer records are indexed by, and retrievable by the names and other indicia of authors and addresses, and may permit retrieval by names elsewhere in documents.

SAFEGUARDS:

Paper records are kept in secure areas. Computer records are protected by passwords available only to staff with a need to know.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel; Director, Office of Compliance Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

These records come from organizations and individuals under investigation; from Commission attorneys, compliance officers, investigators, and supporting technical staff; and from other sources of information relevant to an investigation or adjudication.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

All portions of this system of records which fall within 5 U.S.C. 552a(k)(2) (investigatory materials compiled for law enforcement purposes) are exempt from 5 U.S.C. 552a(c)(3), (mandatory accounting of disclosures); 5 U.S.C. 552a(d), (access by individuals to records that pertain to them); 5 U.S.C. 552a(e)(1), (requirement to maintain only such information as is relevant and necessary to accomplish an authorized agency purpose); 5 U.S.C. 552a(e)(4)(G), (mandatory procedures to notify individuals of the existence of records pertaining to them); 5 U.S.C. 552a(e)(4)(H), (mandatory procedures to notify individuals how they can obtain access to and contest records pertaining to them); and 5 U.S.C. 552a(e)(4)(I), (mandatory disclosure of record source categories); as well as the Commission's regulations in 16 CFR part 1014 which implement these statutory provisions.

CPSC–8

SYSTEM NAME:

CPSC–8, Integrated Field System.

SYSTEM LOCATION:

Directorate for Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and persons signing affidavits related to items acquired for testing or evidentiary purposes by the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain data regarding inspections, accident investigations, recall effectiveness checks, and the collection and custody of product samples for testing or evidentiary purposes. These records contain task assignments made to field personnel, the names of the designated personnel and their supervisors, initial target completion dates, revised target completion dates, and actual completion dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2053, 2076(f).

PURPOSE(S):

The Directorate of Field Operations and the Office of Compliance use this system to manage their operations and document the results of their investigatory activities for potential enforcement action by the Commission. The system is accessed and used in the field by supervisors, investigators, and compliance officers, and at headquarters by compliance officers, attorneys, and managers. It is used to monitor staff workloads and may be used to evaluate staff performance. Statistical compilations from these records may be used in reports to Congress or the press.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored in a computer database system. Users of the system may make printouts of selected portions of the records from time to time.

RETRIEVABILITY:

Information may be retrieved by any field, including personal name or identifiers, by authorized headquarters and field staff.

SAFEGUARDS:

Access to the computer records requires two separate passwords, one for the network on which the database resides and one for the database itself. Paper records are kept in secure locations.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Executive Director, Directorate for Field Operations, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information comes primarily from field staff and their supervisors.

CPSC–9

SYSTEM NAME:

CPSC–9, General Counsel Tracking System.

SYSTEM LOCATION:

Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys working in the Office of the General Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Descriptions and dates of assignments; comments; starting and completion dates; due dates; names of attorneys to whom assignments are given; names of divisions within the Office of the General Counsel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101; 15 U.S.C. 2051 *et seq.*; 16 CFR 1000.14.

PURPOSE(S):

To manage the workflow in the Office of the General Counsel; to assure timely completion of assignments; to respond to queries from other units of the Consumer Product Safety Commission; to assist in evaluating attorney performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FRO STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer database management system. Hard copy printouts of selected groups of records are made from time to time.

RETRIEVABILITY:

Records are retrievable by any field, including attorney name.

SAFEGUARDS:

Access to the records, and to fields within the records, is controlled by passwords. Records are accessible by all Office of the General Counsel staff, but not by others. Only supervisory staff may create records, assign or extend due dates, or enter completion dates.

RETENTION AND DISPOSAL:

Old records are purged from time to time, based on need for computer storage space.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Office, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by the attorneys themselves and by supervisors.

CPSC–10

SYSTEM NAME:

CPSC–10, Procurement Files.

SYSTEM LOCATION:

Division of Procurement Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who sell goods or services to the Consumer Product Safety Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracts, proposals, purchase orders, correspondence and other documents related to specific procurements from individuals. These records may include social security number, home address, home telephone number, and sometimes other personal data. Documents related to procurements from corporations, partnerships, or other such business entities are not included in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2076.

PURPOSE(S):

These records support all facets of the Commission's procurement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To the U.S. Department of Justice when related to litigation or anticipated litigation.
2. To the appropriate Federal, State, or local investigation or enforcement agency when there is an indication of a violation or potential violation of statute or regulation in connection with a procurement.
3. To a Congressional office in response to an inquiry made at the request of the individual who is the subject of the record.
4. To the General Accounting Office in the event of a procurement protest involving the individual.
5. To the General Services Administration Board of Contract Appeals in the event of a contract claim or dispute involving the individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders. Extracts of these records, including social security number, address, and phone number, are also kept in a computer database.

RETRIEVABILITY:

Records are retrieved from the computer database by personal name, contract number, and other fields. Paper records are retrieved by contract number, which may be retrieved by first searching for the personal name in the computer database.

SAFEGUARDS:

Paper records are stored in locked cabinets in a secure area. Computer records are accessible only through the use of two separate passwords, which are issued to those with a need to know.

RETENTION AND DISPOSAL:

Computer records are kept indefinitely. Paper records are destroyed 6 years and 3 months after final payment.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Procurement Services, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES

Same as notification.

RECORD SOURCE CATEGORIES:

Personal information in these records is normally obtained from the person to whom the records pertains, but other information may be obtained from references or past performance reports.

CPSC–11 [Reserved]
CPSC–12

SYSTEM NAME:

CPSC–12, Employee Outside Activity Notices.

SYSTEM LOCATION:

Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees engaged in outside employment activities or outside activities such as consultative services, practice of law, or teaching.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information concerning the employee's position, nature of outside activity, relation of official duties to activity, and method of compensation for outside activity.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12674; 5 CFR part 2635, subpart H; and 5 CFR part 8101.

PURPOSE(S):

Information in these records is used by the Ethics Counselor in making a determination as to whether an employee's outside activity constitutes a real or apparent conflict of interest with the employee's government duties and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on hard copy.

RETRIEVABILITY:

Records are filed by employee name.

SAFEGUARDS:

Records are maintained in locked file cabinets.

RETENTION AND DISPOSAL:

Records are maintained for four years after an employee terminates employment with agency. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Designated Agency Ethics Official (General Counsel), Consumer Product

Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

The information in these records is furnished by the employees to whom it pertains.

CPSC–13

SYSTEM NAME:

CPSC–13, Personnel Data System.

SYSTEM LOCATION:

Consumer Product Safety Commission, Director, Office of Human Resources Management and Director, Division of Financial Services, 4330 East West Highway, Bethesda, MD 20814 and the Headquarters unit or Regional Center to which an employee is assigned. Regional Center addresses are listed in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and former employees of CPSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of payroll records, personnel security records, safety records, EEO records, and personnel records. In addition, the system contains data necessary to update the Central Personnel Data File at the Office of Personnel Management, to process personnel actions, to perform detailed accounting distributions, to automatically provide for such tasks as mailing checks and bonds, and to prepare and mail tax returns and reports. Records include, but are not limited to the following categories of records;

1. Employee identification and status data such as name, social security number, date of birth, sex, work schedule, type of appointment, education, veterans' preference, military service.

2. Relevant data such as service computation date for leave, date probationary period began, and date of performance rating.

3. Position and pay data such as pay plan, occupational series, grade, step, salary, merit pay, organization location.

4. Employment data such as position description, special employment program, and target occupational series and grade.

5. Payroll data such as time; attendance; leave; Federal, State, and local tax; allotments; savings bonds; and other pay allowances and deductions.

6. Personnel security data such as security clearance level and basis with dates.

7. Financial data pertaining to travel.

8. Information on debts owed to the government as a result of overpayment, refund owed, or a debt referred for collection by another agency.

9. Information, including address and social security number, on individual vendors to the Commission. This includes employees who receive reimbursements for expenses incurred.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part III, is the authority for the overall system. Specific authority for use of Social Security numbers is contained in Executive Order 9397, 26 CFR 31.6011(b)(2) and 26 CFR 31.6109–1. The authority for the personnel security clearance and statistical records is contained in Executive Order 19450, April 27, 1953, as amended; Executive Order 12065, June 28, 1978; 31 U.S.C. 686; and 40 U.S.C. 318 (a) through (d).

PURPOSE(S):

This system supports the day to day operating requirements associated with personnel oriented program areas from hiring employees and paying employees and vendors to calculating estimated retirement annuities. Payroll-related outputs include a comprehensive payroll; detailed accounting distribution of costs; leave data summary reports; an employee's statement of earnings, deductions and leave every payday for each employee; State, city, and local unemployment compensation reports; Federal, State, and local tax reports; W–2 wage and tax statements; and reports of withholdings and contributions. Personnel-related reports include automated personnel actions as well as organization rosters, retention registers, retirement calculations, reports of the Federal civilian employment, employee master record printouts, length of service lists, and listings of within-grade increases. These records are used to provide data for agency reports and internal workforce statistics and information regarding such matters as average grade, veteran and handicap employment, retention-standing, within-grade due dates, occupational groupings, geographic employment and others related to the operation of the personnel office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses of records maintained in the system include:

1. Providing data to the Office of Personnel Management's Central Personnel Data File (CPDF).

2. Providing a copy of an employee's Department of the Treasury Form W–2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, and 5520.

3. Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Assistant Administrator for Plans, Programs, and Financial Management, General Services Administration (B), Washington, DC 20405.

4. To the extent necessary, records are available to Commission and outside government agencies to monitor and document grievance proceedings, EEO complaints, and adverse actions; and to provide reference to other agencies and persons for employees seeking employment elsewhere.

5. Some records or data elements in this system of records may also be in the Office of Personnel Management's government-wide system OPM/GOVT–1 and are subject to that system's routine uses.

6. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

7. The names, social security numbers, home addresses, dates of birth, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity

Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file folders and on computer magnetic media.

RETRIEVABILITY:

Paper records are filed by name. Computer records are retrievable by any data element or combination of data elements.

SAFEGUARDS:

Paper records are stored in lockable metal cabinets or in secured rooms. Password system protects access to the computerized records. Information is released only to authorized officials on a need-to-know basis.

RETENTION AND DISPOSAL:

Payroll-related records are sent to storage two years after the end of the fiscal year to which they pertain.

Personnel-related records are disposed of two years after termination of employment.

SYSTEM MANAGER(S) AND ADDRESS:

For payroll-related records: Director, Division of Financial Services, Consumer Product Safety Commission, Washington, DC 20207.

For personnel-related records: Director, Office of Human Resources Management, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

The individuals themselves, other employees, supervisors, other agencies' management officials, non-Federal sources such as private firms, and data from the systems of records OPM/GOVT–1 and EEOC/GOVT–1.

CPSC–14

SYSTEM NAME:

CPSC–14, Corrective Actions and Sample Tracking System.

SYSTEM LOCATION:

Recallss and Compliance Division, Office of Compliance, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC compliance officers and CPSC attorneys in the Office of Compliance; Regional Center compliance officers; contact persons for manufacturers, distributors, or retailers of potentially hazardous products.

CATEGORIES OF RECORDS IN THE SYSTEM:

There are two types of records in the system. The first type of record includes various kinds of abbreviated descriptive and status information about samples of consumer products collected as potential evidence of substantial product hazards. This kind of record identifies the compliance officer responsible for the sample, the name of the product, and the manufacturer of the product.

The second type of record includes management information about investigations opened to deal with potentially hazardous products, including the name and manufacturer, distributor, or retailer of the product, the compliance officer and attorney assigned to the case, the status and priority of the case, various dates which document the progress of the case, and the corrective action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2064; 16 CFR parts 1115 and 1118.

PURPOSE(S):

15 U.S.C. 2064 authorizes the Consumer Product Safety Commission to order the manufacturer, distributor, or retailer of a consumer product to take corrective action whenever the Commission determines that the product creates a substantial risk of injury to the public. Where appropriate, the Commission may attempt to negotiate a voluntary agreement with a manufacturer, distributor, or retailer to take corrective action. The Commission's Recalls and Compliance Division uses this system of records to manage its substantial product hazard correction activities, from the receipt of information about a suspected product hazard, through the collection and evaluation of evidence, to ultimate resolution. It is also used to monitor staff workloads and evaluate staff performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer database management system. Hard copy printouts of all or selected groups of records are made from time to time.

RETRIEVABILITY:

Records are retrievable by any field, including compliance officer and attorney name.

SAFEGUARDS:

Access to records and to fields within records, is controlled by passwords. Records are accessible only by members of the Commission's Recalls and Compliance Division and Legal Division in the Office of Compliance and by Regional Center compliance officers. Only members of the Recalls and Compliance Division and a designated clerical person may enter data, other than a preliminary determination date and the file closing date, which can only be entered by supervisory personnel.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Recalls and Compliance Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom and Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by manufacturers, distributors, or retailers of consumer products, Commission compliance officers, Commission attorneys, and other Commission staff.

CPSC–15

SYSTEM NAME:

CPSC–15, Employee Relations Files.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Human Resources Management, 4430 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of the Consumer Product Safety Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to: (1) Disciplinary actions, complaints, grievances, potential adverse actions, and proposals, decisions, or determinations made by management relative to the foregoing; (2) retirement records.

The records consist of the notices to the individuals, records of resolutions of complaints, materials placed into the record to support the decision or determination, affidavits or statements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 4308, 5115, 5338, 7151, 7301, 7701, 8347; Executive Orders 9830, 10987, 11222, 11478.

PURPOSE(S):

These records and information in the records may be used as a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To respond to a request from a Member of Congress regarding the status of an appeal, complaint or grievance.

2. To provide information to the public on the decision of an appeal, complaint, or grievance required by the Freedom of Information Act.

3. To respond to a court subpoena and/or refer to a district court in connection with a civil suit.

4. To adjudicate or resolve an appeal, complaint, or grievance.

5. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, to the appropriate agency, whether federal, state, or local, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

6. To request information from a federal, state or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, if necessary to obtain relevant information to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, or the issuance of a license, grant, or other benefit.

7. To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, or issuance of a license, grant or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision of that matter.

8. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

9. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETRIEVABILITY:

These records are indexed by the names of the individuals on whom they are maintained.

SAFEGUARDS:

Records are located in a combination lock metal file cabinet and access is limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The records are maintained for 4 years after an employee leaves. Disposal is by normal procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor and Employee Relations Branch, Office of Human Resources Management, Consumer Product Safety, Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is furnished by: (1) Individual to whom the record pertains; (2) Agency officials; (3) Affidavits or statements from employee; (4) Testimonies of witnesses; (5) Official documents relating to appeal, grievance, or complaints; (6) Correspondence from specific organizations or persons.

CPSC–16

SYSTEM NAME:

CPSC–16, Equal Employment Opportunity (EEO) Counseling Files.

SYSTEM LOCATION:

Consumer Product Safety Commission, Office of Equal Employment Opportunity and Minority Enterprise, 4430 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who are counseled by EEO Counselors on EEO matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information regarding counseling of employees who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age, or mental or physical handicaps.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR part 1614.

PURPOSE(S):

To document instances of discrimination on any of the above bases and to be part of the record in any formal complaint of discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records are maintained in locked files in a secured area.

RETENTION AND DISPOSAL:

Destroyed after two years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Equal Employment Opportunity and Minority Enterprise, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records is furnished by the employee to whom it pertains and by any witnesses.

CPSC–17

SYSTEM NAME:

CPSC–17, Commissioned Officers Personal Data File.

SYSTEM LOCATION:

A complete record on every commissioned officer is maintained in the Regional Center to which the commissioned officer is assigned. Regional Center addresses are listed in Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

State employees commissioned as officers of CPSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents related to the commissioning of the individual and personal data including name, social security number, date of birth, educational background, employment history, medical information, home address and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 29(a)(2), Consumer Product Safety Act (15 U.S.C. 2078(a)(2)); E.O. 10450, sections 8(c), 9(a), 9(b); E.O. 10561.

PURPOSE(S):

1. Used by agency officials for purposes of review in connection with commissioning, and determination of qualifications for recommissioning of an individual.

2. To provide statistical reports to Congress, agencies and the public on characteristics of the Commissioned officer program.

3. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information without personal identification of individuals. Under the Freedom of Information Act or to locate specific individuals for personnel research or other personal management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To provide information to a Federal or state agency, in response to its request, in connection with the hiring or retention of an employee, or other benefit by the requesting agency.

2. To request information from a Federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information if necessary to obtain information relevant to an agency decision concerning the commissioning or recommissioning of an individual.

3. Disclosure to a congressional office in response to an inquiry from the congressional office made at the request of the individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by state and by name.

SAFEGUARDS:

Records are located in lockable metal file cabinets or metal file cabinets in secured rooms with access limited to those whose official duties require access.

RETENTION AND DISPOSAL:

The records are maintained and disposed of in accordance with Commission records management policies and procedures.

SYSTEM MANAGER(S) AND ADDRESS:

Regional Center Directors, Consumer Product Safety Commission, (Regional Center addresses are listed in Appendix I).

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these records comes either from the individual to whom it pertains or from agency officials, CPSC supervisors, or state officials.

CPSC–18

SYSTEM NAME:

CPSC–18, Procurement Integrity Records.

SYSTEM LOCATION:

Division of Procurement Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees involved in the procurement of goods or services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Procurement Integrity Certificates. These are standard forms that are certifications that the employees to whom they pertain understand and will abide by specified laws and regulations pertaining to procurement activities. The forms include the name, signature and, for forms completed before April, 1997, the social security number of the individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

41 U.S.C. 423(l)(2).

PURPOSE(S):

These certificates provide continuing evidence of an individual's qualification to participate in procurement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Transfers to Federal, State, local, or foreign agencies when relevant to civil, criminal, administrative or regulatory investigations or proceedings, including transfer to the Office of Government Ethics in connection with its program oversight responsibilities.

2. To a Federal agency pursuant to a request by the agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit.

3. To committees of the Congress.

4. Any other use specified by the Office of Personnel Management (OPM) in the system of records entitled ''OPM/GOVT–1, General Personnel Records,'' as published in the **Federal Register** periodically by OPM.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored alphabetically in file folders.

RETRIEVABILITY:

Retrieved by name of the individual to whom the record pertains.

SAFEGUARDS:

Records are kept in a secure area.

RETENTION AND DISPOSAL:

Records are kept until no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Procurement Services, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual to whom a record pertains.

CPSC–19

SYSTEM NAME:

Office of Hazard Identification and Reduction Tracking System.

SYSTEM LOCATION:

Office of Hazard Analysis and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Project managers and supervisors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include management information such as the project manager, supervisor, origin of the project, products and hazards addressed, types of interventions, schedules and milestones, Commission decisions, key accomplishments, and resources expended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2051 *et seq.*; 31 U.S.C. 1116.

PURPOSE(S):

The Consumer Product Safety Act, the Federal Hazardous Substances Act, the Flammable Fabrics Act, and the Poison Prevention Packaging Act authorize the Consumer Product Safety Commission to collect death and injury data, conduct research on the safety of consumer products, develop voluntary and mandatory safety standards, and ban unusually hazardous consumer products. The Office of Hazard Identification and Reduction and other Commission staff use this system to manage such programs. The system tracks critical project elements from the identification and characterization of hazards to the development and implementation of voluntary or regulatory solutions. Reports from the system are used for evaluating and reporting progress in addressing hazards of importance to the Commission. The system generates statistical data for OMB and the Congress. The system is also used to prepare reports on agency progress as required by the Government Performance and Results Act of 1993. It may also be used to evaluate staff performance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained by a computer database system. Hard copy printouts of all or selected groups of records are made from time to time.

RETRIEVABILITY:

Records are retrievable by any field, including names of project managers and supervisors.

SAFEGUARDS:

Access to records and to fields within records is controlled by passwords. Records are accessible only by members of the Office of Hazard Identification and Reduction, including project mangers and their supervisors.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Executive Director, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information in these record is developed within the Commission from the planning and implementing of project activities. Information is obtained from project managers, their supervisors, official Commission records, and other management and accounting systems.

CPSC–20

SYSTEM NAME:

CPSC–20, Personnel Security File.

SYSTEM LOCATION:

Office of Human Resources Management, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Consumer Product Safety Commission, and applicants for employment with the Consumer Product Safety Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of name checks, inquiries, and investigations furnished by the Office of Personnel Management to determine suitability for employment with, or continued employment by, the Consumer Product Safety Commission. Information in records may include date and place of birth, citizenship, marital status, military status, and social security status. These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations of law; information from present and former supervisors, co-workers, associates, educators; credit and National Agency checks; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450; 5 U.S.C. 301.

PURPOSE(S):

The records in this system of records are used by the Director, Office of Human Resources and the Personnel Security Officer to determine whether the employment of an applicant, or retention of a current employee, is in the interest of the Commission and to determine whether to grant an employee access to non-public information or restricted areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. To request from a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information, data relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance to an employee, or other administrative action concerning an employee.

2. To the Office of Personnel Management in their role as an investigating agency, and in their role as the agency responsible for conducting a continuing assessment of agency compliance with federal personnel security and suitability program requirements.

3. To the Office of Personnel Management for use in other personnel matters.

POLICIES AND PRACTICES FOR STRONG, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed alphabetically by name.

SAFEGUARDS:

Records are maintained in a safe-type combination lock file cabinet in the custody of the Personnel Security Officer, Directorate for Administration. Access is limited to the Personnel Security Officer and the Director, Office of Human Resources Management.

RETENTION AND DISPOSAL:

Records are maintained at the Consumer Product Safety Commission for at least two years from the date of any final decision placed in the record.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Labor and Employee Relations, Office of Human Resources Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification. The Freedom of Information/Privacy Act Officer will forward the request to the agency which conducted the investigation, which will make the final determination.

CONTESTING RECORD PROCEDURES:

Same as access.

RECORD SOURCE CATEGORIES:

Office of Personnel Management reports and reports from other federal agencies.

CPSC–21

SYSTEM NAME:

CPSC–21, Contractor Personnel Security File.

SYSTEM LOCATION:

Directorate for Administration, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of contractors for the Consumer Product Safety Commission who perform work on site at the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Results of name checks, inquiries, and investigations furnished by the Office of Personnel Management to determine suitability of contractor employees for performing on site work at the Consumer Product Safety Commission. Information in records may include date and place of birth, citizenship, marital status, military status, and social security status. These records contain investigative information regarding an individual's character, conduct, and behavior in the community where he or she lives or lived; arrests and convictions for any violations of law; information from present and former supervisors, co-workers, associates, educators; credit and National Agency checks; and other information developed from the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2076(e).

PURPOSE(S):

The records in this system of records are used by the Associate Executive Director for Administration and the Personnel Security Officer to determine whether it is in the interest of the Commission to permit a contractor's employee to work on the Commission premises, and whether it is in the interest of the Commission to grant a contractor's employee access to non-public information or restricted areas.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are retrieved by contractor name and by contractor employee name.

SAFEGUARDS:

Records are maintained in a safe-type combination lock file cabinet in the custody of the Associate Executive Director for Administration. Access is limited to the Personnel Security Officer and the Associate Executive Director for Administration.

RETENTION AND DISPOSAL:

Records are maintained at the Consumer Product Safety Commission for at least two years from the date of termination of the contract under which a person is employed.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director for Administration, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification. The Freedom of Information/Privacy Act Officer will forward the request to the agency which conducted the investigation, which will make the final determination.

CONTESTING RECORD PROCEDURES:

Same as access.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains, Office of Personnel Management reports and reports from other federal agencies.

CPSC–22

SYSTEM NAME:

CPSC–22, Management Information System.

SYSTEM LOCATION:

Consumer Product Safety Commission, Associate Executive

Director for Administration, 4330 East West Highway, Bethesda, Maryland 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All CPSC employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain information on work and leave hours charged by individual employees against CPSC programs, projects, and organization categories. The data included are: program codes, project codes, organization codes, reporting period, employee name and CPSC employee number, and hours charged.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

15 U.S.C. 2051 et seq.; 44 U.S.C. 3101.

PURPOSE(S):

The records are used to produce periodic printed reports which show total employee time and costs allocated to Commission programs and projects by organizational elements. The cost information includes information derived from the Commission's accounting system. Some of the reports will display the time charged by individual employees by programs and projects within organizational elements.

These reports are distributed to CPSC managers, supervisory personnel and staff at all levels as a management tool to:

1. Inform project managers of time worked by individuals on specified program and project activities;
2. Assure accurate reporting and recording of time worked on agency programs and projects;
3. Track the agency's work in terms of programs and projects;
4. Assist in the preparation of the CPSC Fiscal Year Operating Plan.
5. Assess achievement of planned goals established in the CPSC Fiscal Year Operating Plan;
6. Identify resource allocation deficiencies;
7. Provide an historical record of agency program, project, and organization resource expenditures;
8. Assure effective distribution of staff skills for planned workloads;
9. Provide reports to top level management on agency accomplishment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and on computer magnetic media.

RETRIEVABILITY:

Records are retrievable by any of the data items on the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

SAFEGUARDS:

Access to individual computer records is restricted to staff of the Associate Executive Director for Administration through the use of special computer identification codes. Hard copy individual records are kept in locked file cabinets with access also restricted to the staff of the Associate Executive Director for Administration. Management Information System data will not be used as evidence against the supplying employee in employee performance evaluations or adverse actions.

RETENTION AND DISPOSAL:

Individual hard copy employee records and computer records, other than time and cost totals, are retained for not more than one year. Disposal is accomplished through magnetic disc or magnetic tape erasure for computer-stored records, and direct disposal into trash for hard copy individual records.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director for Administration, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as Notification.

CONTESTING RECORD PROCEDURES:

Same as Notification.

RECORD SOURCE CATEGORIES:

Information in these records is furnished by the employees to whom it pertains.

CPSC–23 [Reserved]

CPSC–24

SYSTEM NAME:

CPSC–24 Respirator Program Medical Reports.

SYSTEM LOCATION:

Directorate for Administration, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

CPSC employees whose jobs may require them to wear respirators.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical reports indicating (a) approval or disapproval for an employee's use of respirators; (b) allowable level of exertion and any medical conditions relevant to the use of respirators; and (c) recommended interval until next medical evaluation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 CFR 1910.134(b)(10).

PURPOSE(S):

These records are used to keep track of employees who are authorized to work in hazardous environments requiring the use of respirators and to schedule repeat medical examinations for those employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy.

RETRIEVABILITY:

Records are retrieved by name of employee.

SAFEGUARDS:

Records are maintained in a combination lock safe-type filing cabinet.

RETENTION AND DISPOSAL:

Records are maintained until termination of employment with CPSC.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director for Administration, Consumer Product Safety Commission, Washington, DC 20207.

NOTIFICATION PROCEDURE:

Freedom of Information/Privacy Act Officer, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

RECORD ACCESS PROCEDURES:

Same as notification.

CONTESTING RECORD PROCEDURES:

Same as notification.

RECORD SOURCE CATEGORIES:

Information is provided by the medical facility performing the medical evaluations. The evaluation is based in

part on information provided by the employee to the medical facility.

Appendix I Regional Office Addresses

Central Regional Center, 230 S. Dearborn Street, Room 2944, Chicago, Illinois 60604–1601.

Eastern Regional Center, 6 World Trade Center, Room 350, New York, New York 10048–0206.

Western Regional Center, 600 Harrison Street, Room 245, San Francisco, California 94107–1370.

Appendix II Pertinent Record Systems of Other Agencies

Other Federal agencies maintain government-wide systems of records which may contain information about CPSC employees. Some of these records may be physically located at CPSC. These systems include:

1. Office of Personnel Management, OPM/GOVT–1, General Personnel Records (includes official personnel folders).
2. Office of Personnel Management, OPM/GOVT–2, Employee Performance File System Records.
3. Office of Personnel Management, OPM/GOVT–3, Records of Adverse Actions, Performance Based Reduction in Grade and Removal Actions, and Termination of Probationers.
4. Office of Personnel Management, OPM/GOVT–5, Recruiting, Examining, and Placement Records.
5. Office of Personnel Management, OPM/GOVT–6, Personnel Research and Test Validation Records.
6. Office of Personnel Management, OPM/GOVT–7, Applicant Race, Sex, National Origin, and Disability Status Records.
7. Office of Personnel Management, OPM/GOVT–9, File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals.
8. Office of Personnel Management, OPM/GOVT–10, Employee Medical File System Records.
9. Office of Government Ethics, OGE/GOVT–1, Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records (includes financial interest disclosure forms of CPSC employees subject to the Ethics in Government Act).
10. Office of Government Ethics, OGE/GOVT–2, Confidential Statements of Employment and Financial Interests.
11. Office of Special Counsel, OSC/GOVT–1, Complaint, Litigation and Political Activity Files.
12. Federal Emergency Management Agency, FEMA/GOVT–1, Uniform Identification System for Federal Employees Performing Essential Duties During Emergencies.
13. Equal Employment Opportunity Commission, EEOC/GOVT–1, Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.
14. Merit System protection Board, MSPB/GOVT–1, Appeal and Case Records.
15. General Services Administration, GSA/GOVT–3, Travel Charge Card Program.
16. General Services Administration, GSA/GOVT–4, Contracted Travel Services Program.
17. Department of Labor, DOL/GOVT–1, Office of Workers Compensation Programs, Federal Employees Compensation Act Files.

[FR Doc. 98–34068 Filed 12–29–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0044]

Proposed Collection; Comment Request Entitled Bid/Offer Acceptance Period

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.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid/Offer Acceptance Period. The clearance currently expires on April 30, 1999.

DATES: Comments may be submitted on or before March 1, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, 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), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Bid acceptance period is the period of time from receipt of bids that is available to the Government to award the contract. This acceptance period is normally established by the Government. However, the bidder may establish a longer acceptance period than the minimum acceptance period set by the Government by filling in the blank. There are instances when the Government is unable to award a contract within the acceptance period due to unforeseen complications. Rather than incur the costly expense of readvertising, the Government requests the bidders to extend their bids for a longer period of time.

These data are placed with the respective bids and placed in the contract file to become a matter of record.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,220*; responses per respondent, *40*; total annual responses, *128,800*; preparation hours per response, *.017*; and total response burden hours, *2,190*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the justification 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. 9000–0044, Bid/Offer Acceptance Period, in all correspondence.

Dated: December 22, 1998.

Victoria E. Moss,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 98–34370 Filed 12–29–98; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Claimcheck Appeals

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This Notice sets forth the Department's plans for enhancing the appeals process available to providers and beneficiaries for claims determinations resulting from TRICARE Claimcheck coding logic.

ADDRESSES: TRICARE Management Activity, Medical Benefits and Reimbursement Systems, 16401 E.

Centretch Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity, telephone (303) 676–3572, or Ann N. Fazzini, Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management activity, telephone (303) 676–3803.

Background

Commercial claims-auditing software can be a critical tool in addressing fraud and abuse, and commercial systems to detect inappropriae coding/billing have been available for several years. Both the General Accounting Office (GAO/AIMD–98–91), and the HHS Inspector General noted the potential value of such systems as early as 1991. The TRICARE Management Activity has taken a phased approach to implementation of TRICARE Claimcheck, a customized version of the commercially available HBOC/GPG ClaimCheck® software. TRICARE Claimcheck contains over 5 million edits that track appropriae billing. These edits include unbundling incidental procedures, medical visits, pre- and post-operative care, mutually exclusive procedures, assistant surgeons, duplicate procedures, and age/sex conflicts. Ninety-seven percent of claims pass through TRICARE Claimcheck aduits without affecting reimbursement. TRICARE Claimcheck was first used in May 1996, and subsequently has been linked with the start of the TRICARE regional at-risk managed care support contracts. Prior to implementation, there was a less-intensive review system that provided only 246 rebundling edits as well as a list of about 250 procedures taht were considered to be incidental to another procedure.

If TRICARE Claimcheck edits result in the denial or rebundling of submitted procedure codes, providers may receive lower than expected payments, and it is important that providers and beneficiaries have a recourse. The General Accounting Office (GAO/HEHS–98–80) in its review of TRICARE/CHAMPUS payments to physicians reported some provider concern about the TRICARE Claimcheck system. Congress mandated that the Department establish an appeals mechanism for providers and beneficiaries in section 714 of the National Defense Authorization Act for FY 1999. Rulemaking will be initiated to amend 32 CFR 199.10 to address TRICARE Claimcheck appeals procedures. We are issuing this Notice prior to rulemaking to explain the current appeals process and to invite suggestions as to the form the intended TRICARE Claimcheck appeals mechanism should take.

Current TRICARE Claimcheck appeals process: A TRICARE Claimcheck appeal is an administrative review of auditing logic. The specific dollar amount of an allowance (e.g., the CHAMPUS Maximum Allowable Charge) is not formally appealable under TRICARE Claimcheck appeals or the appeals procedures established in 32 CFR 199.10. TRICARE Claimcheck appeals are made to the TRICARE Managed Care Support Contractor (MCSC) that processed the claim. The MCSC recovers the claim and related documents to completely review the case and verify the accuracy of the application of the TRICARE Claimcheck edits. This process includes: (1) verification of the correct procedure code(s) used; (2) review for clerical errors that may have resulted in incorrect application of the TRICARE Claimcheck edits; (3) medical review; (4) verification that all necessary medical documentation has been submitted; and (5) review to determine if medical circumstances existed that exceeded the expected circumstances upon which the edit is based. A determination that allows additional payment amounts results in an adjustment of the claim by the contractor with no further action required by the beneficiary or provider.

A corollary of the appeals process involves ongoing communications with our MCSC Medical Directors, Lead Agent Medical Directors, and professional societies and other organizations who have contacted the TMA regarding the appropriateness of specific edits of TRICARE Claimcheck. The TMA is working closely with these entities in reviewing comments and comparing them to the clinical/medical rationale of the TRICARE Claimcheck edit. When consistent with TRICARE policy, changes are made in conjunction with the TRICARE Medical Director. This process ensures that its edits do not result in improper denial or reduction of payment. Suggestions are welcome regarding existing TRICARE Claimcheck edits and recommendations for systemic changes to TRICARE Claimcheck. Clinical/medical rationale for the suggested change should be included for review of the recommendation by the TRICARE Medical Director.

Intended TRICARE Claimcheck appeals process; As stated above, rulemaking will be initiated to further implement the Congressional mandate for a more formalized TRICARE Claimcheck appeals process. In cases where the current TRICARE Claimcheck appeals process described above results in an adverse determination, providers and beneficiaries will have a further level of appeal. Providers and beneficiaries will be able to submit an appeal along with supporting documentation to the TRICARE Management Activity. The requested for appeal will be considered on its own merits and a written response will be provided for each determination made. The appeal decision issued by the TRICARE Management Activity will be the final agency decision on the appeal.

Dated: December 24, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–34478 Filed 12–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on National Imagery and Mapping Agency (NIMA) will meet in closed session on January 14–15 and February 25–26, 1999 at Strategic Analysis Inc. (SAI), Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the objectives and plans of the National Imagery and Mapping Agency (NIMA) to meet the needs of the national and military intelligence customers as they enter the 21st Century.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 23, 1998.

L.M. Bynum,

Alterante OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–34477 Filed 12–29–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 1, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat*__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 22, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Safe and Drug-Free Schools (SDFS) Recognition Program/Site Visits.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 130; Burden Hours: 2,760.

Abstract: The SDFS Recognition Program was established to recognize public and private schools that have demonstrated exemplary practices in creating safe and orderly learning environments. The newly redesigned program will focus on: (1) research-based principles; (2) collaboration with partners and/or co-sponsors at the federal, state, and local levels (both public and private); and (3) effective diffusion of knowledge about what works to prevent drug use and violence among youth. The purpose of the site visits is to validate information contained in the applications. The site visit write-ups will be provided to the reviewers to help them make their final recommendations, and will become part of the school's file.

[FR Doc. 98–34441 Filed 12–29–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 1, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat*__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at

the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Federal PLUS Loan Program Application Documents.

Frequency: On occaision.

Affected Public: Individuals or households; Business or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 100,000;

Burden Hours: 50,000.

Abstract: This application form and promissory note is the means by which a parent borrower applies for a Federal PLUS Loan and promises to repay the loan, and a school, lender, and guaranty agency certifies the parent borrower's eligibility to receive a PLUS loan.

Office of Educational Research and Improvement

Type of Review: New.

Title: Program for International Student Assessment (PISA) Field Test.

Frequency: One Time.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,860.

Burden Hours: 4,825.

Abstract: PISA will collect policy-oriented and internationally comparable indicators of student achievement at the end of secondary school on a timely and regular basis (every three years). For comparability with other education systems around the world, 15 year old students will be assessed in the U.S. and comparisons of results will be made with approximately 30 countries.

[FR Doc. 98–34525 Filed 12–29–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 31, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 1, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W. , Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__*Sherrill*@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: December 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services.

Type of Review: Revision.

Title: Title I State Plan for Vocational Rehabilitation Services and Title VI–Part B Supplement for Supported Employment Services.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 82; *Burden Hours:* 1,002,050.

Abstract: The Workforce Investment Act of 1988 (WIA) requires the submittal of the Title I State Plan for Vocational Rehabilitation Services and a supplement to the Plan for Supported Employment Services on the same date that the state submits its state plan under WIA. Some states may be submitting plans as early as April 1, 1999. Program funding is contingent on

departmental approval of the plan and its supplement.

[FR Doc. 98–34527 Filed 12–29–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 29, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__*Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: December 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Child Care Access Means Parents in School Program.

Frequency: 18 months and 36 months.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 80;

Burden Hours: 3,200.

Abstract: Collect program and budget information to make grants to institutions of higher education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–34526 Filed 12–29–98; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6213–3]

EPA Identification of Additional Waters to be Added to Virginia's 1998 Clean Water Act Section 303(d) List of Impaired Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearings and availability for public comment.

SUMMARY: The Environmental Protection Agency (EPA) is providing public notice of the availability of its December 16, 1998 identification of additional waters to be added to Virginia's 1998 Clean Water Act section 303(d) list and is inviting public comment on that identification. EPA is also providing notice of two public hearings. EPA intends to make a final determination 45 days after the close of this public comment period regarding the waters to be added to Virginia's 1998 303(d) list. EPA will transmit the listing of additional waters to Virginia, which must incorporate them into it's current water quality management plan.

Section 303(d) of the Clean Water Act and the implementing regulations at 40 CFR 130.7 require states to identify their waters that do not, or will not, meet water quality standards even after required technology-based or other controls are in place. This list, known as the Section 303(d) list, must be submitted to EPA for approval.

Federal regulations require states to consider all existing and readily available water quality-related data and information in developing the 303(d) list. EPA determined that the Commonwealth of Virginia did not fully meet this requirement. The Agency partially approved and partially disapproved Virginia's 303(d) list on November 16, 1998. On December 16, 1998, EPA identified a number of waters to be added to Virginia's 303(d) list based on existing and readily available water quality-related data and information.

DATES: Comments must be received on or before March 1, 1999. The two public meetings will be held: (1) February 10, 1999, 7:00 p.m. to 9:30 p.m., Roanoke, VA. (2) February 11, 1999, 7:00 p.m. to 9:30 p.m., Richmond, VA. If you would like to testify at the public hearings, please register with Ms. Lenka Berlin at the phone number below by February 8, 1999.

ADDRESSES: Submit comments to Ms. Lenka Berlin (3WP13), Water Protection Division, USEPA Region III, 1650 Arch Street, Philadelphia, PA 19103. The February 10, 1999 public hearing will be at the Roanoke County Administration Center, 6204 Bernard Drive, Roanoke, VA 24018. The February 11, 1999 public hearing will be at the Division of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220.

FOR FURTHER INFORMATION CONTACT: For a copy of the document detailing EPA's November 16, 1998 partial disapproval and a list of the waters EPA has identified to be added to Virginia's list, contact Ms. Lenka Berlin by phone (215–814–5259), fax (215–814–2301), or by e-mail (berlin.lenka@epamail.epa.gov). For a copy of Virginia's final Section 303(d)

list submittal, contact Mr. Charles Martin, Virginia Department of Environmental Quality, at (804) 698–4462.

SUPPLEMENTARY INFORMATION:

What is required of the Section 303(d) list?

Federal regulations include two requirements that are most pertinent to EPA's partial disapproval of Virginia's 1998 Section 303(d) list. First, the regulations require that states consider all existing and readily available water quality-related data and information in identifying waters for the 303(d) list. See 40 CFR 130.7(b)(5). Second, if EPA disapproves a list, the Agency must identify the waters to which the disapproval applies. See 40 CFR 130.7(d)(2).

What did Virginia's Section 303(d) list include?

EPA received Virginia's final 1998 Section 303(d) report on October 16, 1998. The report included five parts plus appendices. Parts I and II of the report are the impaired waters that the Commonwealth determined require TMDLs. EPA considers Parts I and II to be the Commonwealth's Section 303(d) list. Parts III, IV and V are waters of concern that the Commonwealth determined do not require TMDLs. EPA considers these three parts to be for informational purposes only, outside the Section 303(d) list. Among the appendices to the submission is Appendix D, which lists the waters which the Commonwealth included on its 1996 Section 303(d) list but did not include on its 1998 list. Virginia explained that it did not include these waters because point sources on these waters had reportedly been issued water quality-based effluent limits that would eliminate the impairment within the next two-year reporting cycle.

Why did EPA partially disapprove Virginia's 1998 Section 303(d) list?

In reviewing the list, EPA determined that Virginia had omitted certain waters from the list even though existing and readily available water quality-related data and information show that these waters do not meet water quality standards even after required technology-based and other controls are applied. On November 16, 1998 EPA disapproved the omission of these waters from the list and on December 16, 1998 identified the waters to be added to the list.

Which waters did EPA identify to be added to Virginia's 1998 Section 303(d) list?

On December 16, 1998 EPA identified the following five groups of waters to be added to Virginia's 1998 303(d) list:

1. Portions of the mainstem Chesapeake Bay and three tidal tributaries because existing and readily available water quality-related data and information show that the water quality standards for dissolved oxygen are not being met. EPA identified those portions of the mainstem Chesapeake Bay and three tidal tributaries as high priority for TMDL development. In addition, EPA identified excessive nutrients as the pollutants of concern causing violations of the applicable water quality standard for dissolved oxygen.

2. 77 waters presented in Appendix D of Virginia's report (waters that were listed in 1996 as needing TMDLs but were not included on the 1998 list). The only data the Commonwealth provided to EPA (i.e., that submitted with the 1996 Section 303(d) list) indicated that these segments are impaired. EPA designated these waters as low priority for TMDL development.

3. 47 waters presented in Part V of Virginia's report (waters reportedly impaired by natural conditions and not identified as requiring TMDL development) because they fail to meet water quality standards. EPA designated these waters as low priority for TMDL development.

4. 10 waters that were identified as impaired (not meeting water quality standards or designated uses) in the Commonwealth's 1998 Section 305(b) report but were not included by Virginia on the Section 303(d) list.

5. 6 waters that are already listed for one or more pollutants but, based on information from the Commonwealth's 1998 Section 305(b) report, should be listed for an additional pollutant.

In addition to identifying the five groups of waters above, EPA recommends that the Commonwealth modify the priority rankings, from medium to high, for four waters identified by the U.S. Fish and Wildlife Service as adversely impacting endangered species.

Dated: December 16, 1998.

Thomas J. Maslany,

Director, Water Protection Division, EPA Region III.

[FR Doc. 98–34548 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–850; FRL–6050–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–850, must be received on or before January 29, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Treva C. Alston	Rm. 707B, CM #2, 703–308–8373, e-mail:alston.treva@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Hoyt Jamerson	Rm. 268, CM #2, 703–308–9368, e-mail: jamerson.hoyt@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–850] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–850] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 17, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Huntsman Corporation of Houston, Texas

PP 8E4992

EPA has received a pesticide petition (PP 8E4992) from Huntsman Corporation of Houston, Texas, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for propylene carbonate and butylene carbonate (4-(methyl and ethyl)-(1,3-dioxolan-2-one)) when used in accordance with good agricultural practice as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

Analytical method. An analytical residue method utilizing chromatography with a flame-ionization detector is available for enforcement purposes.

B. Toxicological Profile

1. *Acute toxicity.* Acute toxicity studies include an acute oral rat study on propylene carbonate with an LD_{50} of 29,100 milligrams/kilogram of body weight (mg/kg/bwt), an acute oral mouse study on propylene carbonate with an LD_{50} of 20,700 mg/kg/bwt, an acute dermal toxicity study in the rat with an LD_{50} >5,000 mg/kg, acute inhalation studies in the rat, dog, and guinea pig with an LD_{50} values >3,000 mg/L (airborne concentration), a primary eye irritation study with rabbits indicating that propylene carbonate is a slight eye irritant, a primary dermal irritation study in the rabbit showing propylene carbonate to be a non-irritant and dermal sensitization studies in humans showing propylene carbonate is not a skin sensitizer.

2. *Genotoxicity.* The mutagenic potential of propylene carbonate has been evaluated in several studies covering a variety of endpoints. It is concluded that propylene carbonate is not mutagenic. Mutagenic studies with propylene carbonate include gene mutation assays in bacterial and mammalian cells; *in vitro*, and *in vivo* chromosomal aberration assays; and an *in vivo* DNA repairs assay in mammalian cells. All studies were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* A developmental toxicity study with rats given oral gavage doses of up to 5,000 mg/kg/day from days 6 through 15 of gestation resulted in a no observed adversed effect level (NOAEL) for maternal toxicity of 3,000 mg/kg/day based upon bwt reduction at the highest doses. There was no evidence of developmental toxicity or any malformations in fetuses at any of the dose levels, including the highest dose of 5,000 mg/kg/day.

4. *Subchronic toxicity.* A 28 day oral subchronic toxicity study was conducted with propylene carbonate in rats at rates up to 5,000 mg/kg/day. Treatment related increased ovary weights, and testes weights were observed at the highest dose and increased ovary weights were observed at the two highest dose levels of 3,000 and 5,000 mg/kg/day. The NOAEL was 1,000 mg/kg/day.

i. A 90 day oral subchronic toxicity study was conducted with propylene carbonate in rats at rates up to 5,000 mg/kg/day. There was reduced body weight and food consumption at the high dose level. Male kidneys also had reduced weight at the high dose group and there

were some minor blood chemistry changes. The authors concluded that there were no apparent toxicological effects from the consumption of propylene carbonate at rates up to 5,000 mg/kg/day over 90 days.

ii. A 14 week whole-body exposure inhalation toxicity study was conducted with propylene carbonate in rats at rates up to 1,000 mg/m^3. In this study, neurotoxic motor responses were also monitored. The authors concluded that there were no toxicological effects from the consumption of propylene carbonate at rates up to 1,000 mg/m^3 except minimal eye irritation.

5. *Chronic toxicity*. A 24 month chronic oral toxicity study in mice was conducted with propylene carbonate by application twice per week to clipped areas of the back. There were no tumors and no skin irritation as a result of treatment propylene carbonate in this study.

C. Aggregate Exposure

The following is a description of the likelihood of exposure to propylene and butylene carbonate from various routes.

1. *Dietary exposure*. Propylene and butylene carbonate are cleared as an indirect food additive under 21 CFR 175.105 for use as an indirect food additive in packaging. This clearance obtains from the use of propylene, and butylene carbonate in packaging glue and other indirect food additive uses. Little or no migration into the food substance is expected from these uses according to the information included in 21 CFR.

Propylene and butylene carbonate are not cleared for any applications to growing crops or to crops after harvest at this time, but following granting of this exemption, this will be the primary source of dietary exposure.

2. *Non-dietary exposure*. Propylene and butylene carbonate are solvents used in surface cleaners, degreasers, dyes, fibers, plastics, batteries, and as a gelling agent for clays. There would be additional exposure from theses routes.

D. Cumulative Effects

Propylene and butylene carbonate are members of a class of compounds with structures containing the carbonate moiety. The closest related compound, ethylene carbonate, is used in similar, non-agricultural applications, but does not have any uses which would result in agricultural exposure or dietary exposure.

E. Safety Determination

1. *U.S. population*. Owing to the very high reference dose, it is not reasonable to assume any acute or chronic health effects to the U. S. population. Propylene and butylene carbonate are reduced-risk inerts which will reduce exposure to more toxic inert solvents.

2. *Infants and children*. There is a complete data base for propylene, and butylene carbonate which includes pre- and post-natal developmental toxicity data. The toxicological effects of propylene and butylene carbonate on rodents are well understood.

In a developmental toxicity study in rats, all reproductive parameters investigated showed no treatment-related effects except slightly retarded growth rate. Maternal effects were seen at 5,000 mg/kg/day without developmental effects. The NOAEL for reproductive effects in offspring is 5,000 mg/kg/day.

F. International Tolerances

A maximum residue level has not been set for propylene and butylene carbonate by the Codex Alimentariosu Commission.

2. Interregional Research Project Number 4 (IR-4)

PP 0E3909, 2E4052, 2E4092, 3E4162, and 9E5049

EPA has received a request regarding pesticide petitions (PP 0E3909, 2E4052, 2E4092, 3E4162) from IR-4, New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903 to remove the time limitations on the established tolerances in 40 CFR part 180.412 for the the herbicide sethoxydim (2-1-(ethoxyimino)butyl-5-2-(ethylthio)propyl-3-hydoxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide)) in or on asparagus at 4.0 parts per milllion (ppm), carrot at 1.0 ppm, cranberry at 2.0 ppm, peppermint, and spearmint tops at 30 ppm. EPA has also received a petition (PP 9E5049) from IR-4 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity horseradish at 4 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the permanent tolerances. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by BASF Corporation, Agricultural Products, P.O. Box 13528, Research Triangle Park, NC 27709.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues in plants and animals is adequately understood for the purposes of registration.

2. *Analytical method*. Analytical methods for detecting levels of sethoxydim and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances were submitted to EPA. The proposed analytical method involves extraction, partition, and clean-up. Samples are then analyzed by gas chromatography with sulfur-specific flame photometric detection. The limit of quantitation (LOQ) is 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Based on the available acute toxicity data, sethoxydim does not pose any acute dietary risks. A summary of the acute toxicity studies follows.

i. *Acute oral toxicity—Rat*. Toxicity Category III; LD_{50}=3125 milligrams/kilogram(mg/kg) (male), 2676 mg/kg (female).

ii. *Acute dermal toxicity—Rat*. Toxicity Category III; LD_{50} >5,000 mg/kg (male and female).

iii. *Acute inhalation toxicity— Rat*. Toxicity Category III; LC_{50} (4-hour)=6.03 mg/L (male), 6.28 mg/L (female).

iv. *Primary eye irritation—Rabbit*. Toxicity Category IV; no irritation.

v. *Primary dermal irritation—Rabbit*. Toxicity Category IV; no irritation.

vi. *Dermal sensitization—Guinea pig*. Waived because no sensitization was seen in guinea pigs dosed with the end-use product Poast (18% a.i.).

2. *Genotoxicity*. Ames assays were negative for gene mutation in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA 1537, with and without metabolic activity.

A Chinese hamster bone marrow cytogenetic assay was negative for structural chromosomal aberrations at doses up to 5,000 mg/kg in Chinese hamster bone marrow cells *in vivo*.

Recombinant assays and forward mutations tests in *Bacillus subtilis*, *Escherichia coli*, and *S. typhimurium* were all negative for genotoxic effects at concentrations of greater than or equal to 100%.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rats fed dosages of 0, 50, 180, 650, and 1,000 mg/kg/day with a maternal

no-observed adverse effect level (NOAEL) of 180 mg/kg/day and a maternal lowest obsereved adverse effect level (LOAEL) of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining); and a developmental NOAEL of 180 mg/kg/day, and a developmental LOAEL of 650 mg/kg/day (21 to 22% decrease in fetal weights, filamentous tail, and lack of tail due to the absence of sacraland/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes).

A developmental toxicity study in rabbits fed doses of 0, 80, 160, 320, and 400 mg/kg/day with a maternal NOAEL of 320 mg/kg/day and a maternal LOAEL of 400 mg/kg/day (37% reduction in body weight gain without significant differences in group mean body weights and decreased food consumption during dosing); and a developmental NOAEL greater than 400 mg/kg/day highest dose tested (HDT).

A 2-generation reproduction study with rats fed diets containing 0, 150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) with no reproductive effects observed under the conditions of the study.

4. *Subchronic toxicity* A 21 day dermal study in rabbits with a NOAEL of >1,000 mg/kg/day (limit dose). The only dose-related finding was slight epidermal hyperplasia at the dosing site in nearly all males and females dosed at 1,000 mg/kg/day. According to BASF this was probably an adaptive response.

5. *Chronic toxicity*. A summary of the chronic toxicity studies follows.

A 1-year feeding study with dogs fed diets containing 0, 8.86/9.41, 17.5/19.9, and 110/129 mg/kg/day (males/females) with a NOAEL of 8.86/9.41 mg/kg/day (males/females) based on equivocal anemia in male dogs at the 17.5-mg/kg/day dose level.

A 2-year chronic feeding/carcinogenicity study with mice fed diets containing 0, 40, 120, 360, and 1,080 ppm (equivalent to 0, 6, 18, 54, and 162 mg/kg/day) with a systemic NOAEL of 120 ppm (18 mg/kg/day) based on non-neoplastic liver lesions in male mice at the 360-ppm (54 mg/kg/day) dose level. There were no carcinogenic effects observed under the conditions of the study. The maximum tolerated dose (MTD) was not achieved in female mice.

A 2-year chronic feeding/carcinogenic study with rats fed diets containing 0, 2, 6, and 18 mg/kg/day with a systemic NOAEL greater than or equal to 18 mg/kg/day HDT. There were no carcinogenic effects observed under the conditions of the study. This study was reviewed under current guidelines and was found to be unacceptable because the doses used were insufficient to induce a toxic response and an MTD was not achieved.

A second chronic feeding/carcinogenic study with rats fed diets containing 0, 360, and 1,080 ppm (equivalent to 18.2/23.0, and 55.9/71.8 mg/kg/day (males/females). The dose levels were too low to elicit a toxic response in the test animals and failed to achieve an MTD or define a LOAEL. Slight decreases in body weight in rats at the 1,080 ppm dose level, although not biologically significant, support a free-standing NOAEL of 1,080 ppm (55.9/71.8 mg/kg/day (males/females)). There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism*. In a rat metabolism study, excretion was extremely rapid and tissue accumulation was negligible.

7. *Metabolite toxicology*. As a condition to registration, BASF had been asked to submit additional toxicology studies for the hydroxy metabolites of sethoxydim. EPA agreed with BASF's recommendation to use the most abundant metabolite, 5-OH-MSO2, as surrogate for all metabolites. Based on these data, it was concluded that the toxicological potency of the plant hydroxymetabolites is likely to be equal to or less than that of the parent compound. The tolerance expression for sethoxydim measures sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety, measured as parent. Hence, the hydroxymetabolites are figured into all tolerance calculations.

8. *Endocrine disruption*. No specific tests have been performed with sethoxydim to determine whether the chemical may have an effect in humans that is similar to an effect produced by naturally-occurring estrogen or other endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure, BASF has estimated aggregate exposure based on the Theoretical Maximum Residue Contribution (TMRC) from existing and pending tolerances for sethoxydim. (The TMRC is a ''worst case'' estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels.) The TMRC from existing tolerances for the overall U.S. population is estimated at approximately 44% of the RfD. BASF estimates indicate that dietary exposure will not exceed the RfD for any population subgroup for which EPA has data. This exposure assessment relies on very conservative assumptions 100% of crops will contain sethoxydim residues and those residues would be at the level of the tolerance which results in an over estimate of human exposure.

2. *Other exposure*. Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational sources. Based on the available studies submitted to EPA for assessment of environmental risk, BASF does not anticipate exposure to residues of sethoxydim in drinking water. There is no established Maximum Concentration Level (MCL) for residues of sethoxydim in drinking water under the Safe Drinking Water Act (SDWA).

BASF has not estimated non-occupational exposure for sethoxydim. Sethoxydim is labeled for use by homeowners on and around the following use sites: flowers, evergreens, shrubs, trees, fruits, vegetables, ornamental groundcovers, and bedding plants. Hence, the potential for non-occupational exposure to the general population exists. However, these use sites do not appreciably increase exposure. Protective clothing requirements, including the use of gloves, adequately protect homeowners when applying the product. The product may only be applied through hose-end sprayers or tank sprayers as a 0.14% solution. Sethoxydim is not a volatile compound so inhalation exposure during and after application would be negligible. Dermal exposure would be minimal in light of the protective clothing and the low application rate. According to BASF post-treatment (re-entry) exposure would be negligible for these use sites as contact with treated surfaces would be low. BASF concludes that the potential for non-occupational exposure to the general population is insignificant.

D. Cumulative Effects

BASF also considered the potential for cumulative effects of sethoxydim and other substances that have a common mechanism of toxicity. BASF is aware of one other active ingredient which is structurally similar, clethodim. However, BASF believes that consideration of a common mechanism of toxicity is not appropriate at this time. BASF does not have any reliable information to indicate that toxic effects produced by sethoxydim would be cumulative with clethodim or any other

chemical; thus BASF is considering only the potential risks of sethoxydim in its exposure assessment.

E. Safety Determination

1. *U.S. population— Reference dose (RfD).* Using the conservative exposure assumptions described above, BASF has estimated that aggregate exposure to sethoxydim will utilize 44% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data, and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children*—i. *Developmental toxicity*. Developmental toxicity was observed in a developmental toxicity study using rats but was not seen in a developmental toxicity study using rabbits. In the developmental toxicity study in rats a maternal NOAEL of 180 mg/kg/day and a maternal LOAEL of 650 mg/kg/day (irregular gait, decreased activity, excessive salivation, and anogenital staining) was determined. A developmental NOAEL of 180 mg/kg/day and a developmental LOAEL of 650 mg/kg/day (21 to 22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of sacral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsals, and pubes). Since developmental effects were observed only at doses where maternal toxicity was noted, BASF concludes that the developmental effects observed are believed to be secondary effects resulting from maternal stress.

ii. *Reproductive toxicity*. A 2-generation reproduction study with rats fed diets containing 0,150, 600, and 3,000 ppm (approximately 0, 7.5, 30, and 150 mg/kg/day) produced no reproductive effects during the course of the study. Although the dose levels were insufficient to elicit a toxic response, the Agency has considered this study usable for regulatory purposes and has established a free-standing NOAEL of 3,000 ppm (approximately 150 mg/kg/day) Proposed Rule at 60 FR 13941.

iii. *Reference dose*. Based on the demonstrated lack of significant developmental or reproductive toxicity BASF believes that the RfD used to assess safety to children should be the same as that for the general population, 0.09 mg/kg/day. Using the conservative exposure assumptions described above, BASF has concluded that the most sensitive child population is that of children ages 1-6. BASF calculates the exposure to this group to be approximately 95% of the RfD for all uses (including those proposed in this document). Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, BASF concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the residues of sethoxydim, including all anticipated dietary exposure and all other non-occupational exposures.

F. International Tolerances

A maximum residue level has not been established for sethoxydim on aspargus, carrot, cranberry, peppermint, spearmint or horseradish by the Codex Alimentarius Commission.

[FR Doc. 98–34291 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00538A; FRL–6051–4]

Announcement of the Availability and Request for Comments on Protocols for Testing the Efficacy of Disinfectants Used to Inactivate Hepatitis B Virus and Corresponding Label Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability and requesting comments on two protocols for testing the efficacy of disinfectants against Hepatitis B Virus (HBV). The protocols use Duck Hepatitis B Virus (DHBV) in an *in-vitro* or an *in-vivo* assay system. These protocols were presented at an HBV workshop which was held on July 23 and 24, 1998 at the Double Tree Hotel, Crystal City, VA. As a result of the workshop EPA agreed to publish the testing protocols and proposed labeling claims in the **Federal Register** with a 45–day comment period before the Agency makes a final decision about the use of protocols.

DATES: Comments, identified by the docket control number (OPP–00538A) should be received on or before February 16, 1999, to be given full consideration.

ADDRESSES: Submit comments and other information identified by the docket control number OPP–00538A by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington DC 20460. In person, bring comments directly to the OPP Docket Office which is located in Rm. 119 of Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit III of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Ibrahim Barsoum, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 308W7, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Tel. (703) 308–6417, Fax (703) 308–6466, e-mail: barsoum.ibrahim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

II. Background

EPA held a workshop in July, 1998 to discuss alternative models for testing disinfectants against human HBV. The workshop was attended by representatives from academia, research centers, testing laboratories, and industry. Presentations were given by experts in hepatitis on various animal models of HBV infection followed by

technical presentations on *in-vitro* and *in-vivo* duck models of infection that might be used in testing disinfectants against HBV. Presentations were followed by a discussion on criteria to be used in decision making about surrogate model(s) and proposed labeling claims of registered products. It was proposed in the workshop to leave the label claim broad, such as ''Effective against HBV'' or ''Hepadnavirucidal'' and not to add information about the test organism. Submitted protocols were evaluated and discussed by all participants. At the end of the workshop an outline was presented, showing the agency's implementation plans for allowing products to be registered with HBV label claims using surrogate animal models.

III. Public Record and Electronic Submissions

A record has been established for this action under docket number ''OPP–00538A'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and other information may also be submitted electronically by sending electronic mail (e-mail) to:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form or encryption. Comments will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number ''OPP–00538A.'' No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection, Antimicrobials, Pesticides and pest, Efficacy testing, Hepatitis Virus B (HBV).

Dated: December 17, 1998.

Frank Sanders,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 98–34292 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00558A; FRL–6054–5]

Pesticides: Science Policy Issues Related to the Food Quality Protection Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on notice of availability .

SUMMARY: On November 5, 1998, EPA issued a notice of availability for two draft science policy papers—''Guidance for Submission of Probabilistic Exposure Assessments to the Office of Pesticide Program'' and ''Office of Pesticide Program's Science Policy on the Use of Cholinesterase Inhibition for Risk Assessments of Organophosphate and Carbamate Pesticides.'' The comment period would have ended January 4, 1999. Due to the holidays, EPA has decided to extend the comment period two weeks.

DATES: Written comments must be submitted to EPA by January 19, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given in this unit, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 713D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5448, e-mail: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency has issued the two draft documents listed in the SUMMARY at the beginning of this document and solicited comments on them. The background on these documents can be found in the previous **Federal Register** notice published on November 5, 1998 (63 FR 59780) (FRL–6042–3). A time extension of two weeks is being provided such that the comment period will now end on January 19, 1999.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPP–00559 for ''Guidance for Submission of Probabilistic Exposure Assessments to the Office of Pesticide Programs'' and OPP–00560 for ''Office of Pesticide Program's Science Policy on the Use of Cholinesterase Inhibition for Risk Assessments of Organophosphate and Carbamate Pesticides'' (including comments and data submitted electronically as described in this unit). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the

use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control numbers OPP–00559 or OPP–00560. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: December 21, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–34429 Filed 12–29–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Repudiation and Asset-backed Securitizations and Loan Participations

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed statement of policy.

SUMMARY: In response to inquiries from insured depository institutions, accountants, and other parties involved in asset-backed securitizations and loan participations, the Board of Directors of the FDIC (Board) is proposing to adopt a Statement of Policy Regarding Treatment of Securitizations and Loan Participations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver (Statement of Policy) to clarify how the FDIC will treat securitizations and loan participations in its role as conservator or receiver of insured depository institutions. The proposed Statement of Policy provides that subject to certain conditions, the FDIC will not attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate in the case of a securitization, the financial assets transferred by the insured depository institution to a special purpose entity in connection with the securitization, or in the case of a loan participation, the undivided interest transferred to a participant in connection with the loan participation. It is anticipated that the proposed Statement of Policy would provide helpful guidance to insured depository institutions, accountants, and other parties involved in securitizations and loan participations.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (FAX number (202) 898–3838; Internet address: comments@fdic.gov. Comments may be inspected and photocopied at the FDIC Public Information Center, Room 100, 801 17th Street NW, Washington, DC, on business days between 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Michael H. Krimminger, Senior Policy Analyst, Office of Policy Development, (202) 898–8950; Robert Storch, Chief, Accounting Section, Division of Supervision, (202) 898–8906; Thomas Bolt, Counsel, Legal Division, (202) 736–0168; Federal Deposit Insurance Corporation, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Under section 11(e)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(1), the FDIC, as conservator or receiver of any insured depository institution, may repudiate any contract entered into by the institution before appointment of the conservator or receiver. Insured depository institutions, accountants, and other parties involved in asset-backed securitizations and loan participations have raised questions about whether the repudiation of a securitization or loan participation by the FDIC would result in the FDIC's recovery of the transferred financial assets, in the case of a securitization, or the undivided interest in a loan, in the case of a loan participation. If so, transfers of such assets or interest by insured depository institutions would likely not be accounted for as a sale under generally accepted accounting principles, which require that transferred assets be placed beyond the reach of the transferor, its creditors, or a receiver for the transferor, in order for the transfer to be accounted for as a sale.

The FDIC is considering whether to adopt the proposed Statement of Policy to provide guidance as to its treatment of securitizations and loan participations after its appointment as conservator or receiver of an insured depository institution. The proposed Statement of Policy provides that subject to certain conditions, the FDIC will not attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate (i) in the case of a securitization, the financial assets transferred by the insured depository institution to a special purpose entity in connection with the securitization, or (ii) in the case of a loan participation, the undivided interest transferred to a participant in connection with the loan participation.

The proposed Statement of Policy applies only to securitizations and loan participations where (i) the criteria for sale accounting under generally accepted accounting principles have been satisfied (including the legal isolation test, as affected by the proposed Statement of Policy); (ii) the documentation effecting the transfer of financial assets, in the case of a securitization, or undivided interest in a loan, in the case of a loan participation, reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing (without regard to the intended treatment of the transaction for tax purposes); and (iii) the institution received adequate consideration for the transfer at the time it was made.

The proposed Statement of Policy is set forth below. Comment is invited on all aspects of the proposal, including whether, after adoption of the Statement of Policy by the FDIC, the transfer of financial assets in connection with a securitization and the transfer of an undivided interest in a loan in the form of a loan participation by an insured depository institution would be accounted for as a sale under generally accepted accounting principles.

The Statement of Policy proposed by the Board reads as follows:

Statement of Policy Regarding Treatment of Securitizations and Loan Participations After Appointment of the Federal Deposit Insurance Corporation as Conservator or Receiver

This Statement of Policy is issued by the Federal Deposit Insurance Corporation (FDIC) to clarify the treatment of securitizations and loan participations after appointment of the FDIC as conservator or receiver of an insured depository institution.

I. Definitions

As used in this Statement of Policy, the following terms have the following meanings:

A. ''Beneficial interest'' means debt or equity (or mixed) interests or obligations issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

B. ''Financial asset'' means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity. Financial assets may include, but are not limited to, residential and commercial mortgage loans, commercial and industrial loans, consumer receivables, trade receivables, lease receivables, securities, and obligations satisfying the definition of ''permitted assets'' for purposes of Section 860L(c) of the Internal Revenue Code of 1986, as amended.

C. ''Loan participation'' means the transfer of an undivided interest in all or part of the principal amount of a loan from a seller, known as the ''lead'', to a buyer, known as the ''participant'', without recourse to the lead, pursuant to an agreement between the lead and the participant. ''Without recourse'' means that the loan participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying loan. Use of the singular in this definition is intended to refer also to loan participations that involve more than one loan or more than one buyer.

D. ''Securitization'' means the issuance by a special purpose entity of beneficial interests, the most senior class of which at time of issuance is rated investment grade by one or more nationally recognized statistical rating organizations, or which are sold in transactions by an issuer not involving any public offering for purposes of Section 4 of the Securities Act of 1933.

E. ''Special purpose entity'' means a trust, corporation, or other entity with distinct standing at law from the insured depository institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets (or participations or other interests therein), and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

II. Background

Under generally accepted accounting principles, one of the criteria for a transfer of financial assets to be accounted for as a sale is the ''legal isolation'' of the transferred assets. Assets are deemed to be legally isolated when they have been placed beyond the reach of the transferor and its creditors, even in the case of a bankruptcy or appointment of a receiver for the transferor. Accountants, auditors, and other parties have raised concerns whether the legal isolation test would be satisfied in the case of a transfer of financial assets by an insured depository institution in connection with a securitization, or the transfer of an interest in a loan by such institution in the form of a loan participation, in light of the statutory power of the FDIC as conservator or receiver to repudiate contracts entered into by such institution. Specifically, questions have been raised about whether the repudiation of a securitization or loan participation by the FDIC would result in the FDIC's recovery of the transferred financial assets, in the case of a securitization, or the undivided interest in a loan, in the case of a loan participation. As guidance for parties who may encounter this issue, the FDIC has resolved to issue this statement of policy to clarify the effect of its statutory repudiation power on securitizations and loan participations.

Pursuant to Section 11(e)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e)(1), the FDIC, when acting as conservator or receiver of any insured depository institution, has the power to disaffirm or repudiate any contract or lease (i) to which the institution is a party, (ii) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome, and (iii) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs. Repudiation of a contract relieves the FDIC from performing any unperformed obligations remaining under the contract and entitles the other party to the contract to a claim for damages. Such damages are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the conservator or receiver.

The FDIC may exercise its statutory power to repudiate any contract entered into by the institution, including agreements entered into in connection with securitizations or loan participations. In order to resolve issues raised about the effect of this statutory power on such transactions, the FDIC has determined that, if certain conditions are met, it will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership estate the financial assets or undivided interest in a loan transferred by the institution in connection with a securitization or loan participation, respectively. Accordingly, the FDIC makes the following Statement of Policy, which is intended to be of binding effect upon the FDIC in all instances in which it is appointed as conservator or receiver of an insured depository institution.

III. Statement of Policy

Subject to the following conditions, the FDIC will not attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate (i) in the case of a securitization, the financial assets transferred by the insured depository institution to a special purpose entity in connection with the securitization, or (ii) in the case of a loan participation, the undivided interest transferred to a participant in connection with the loan participation.

IV. Conditions

A. This Statement of Policy addresses only the exercise of the FDIC's statutory repudiation power with respect to securitizations and loan participations.

B. This Statement of Policy applies only to those securitizations or loan participations where the criteria for sale accounting under generally accepted accounting principles have been satisfied (including the legal isolation test, as affected by this Statement of Policy); the documentation effecting the transfer of financial assets, in the case of a securitization, or undivided interest in a loan, in the case of a loan participation, reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing (without regard to the intended treatment of the transaction for tax purposes); and the institution received adequate consideration for the transfer at the time it was made.

C. This Statement of Policy shall not be construed as waiving, limiting, or otherwise affecting the power of the FDIC as conservator or receiver to disaffirm or repudiate any agreement or contract that imposes continuing obligations and duties upon the insured depository institution in conservatorship or receivership, which the conservator or receiver, in its discretion, determines would be burdensome and the disaffirmance or repudiation of which will promote the orderly administration of the institution's affairs. As stated above, however, should the FDIC, in order to terminate such continuing obligations or duties, seek to disaffirm or repudiate an agreement or contract under which an insured depository institution has transferred financial assets in connection with a securitization or undivided interests in a loan in the form of a loan participation, the FDIC will not

attempt to reclaim, recover, or recharacterize as property of the institution or the receivership estate such financial assets or undivided interests.

D. Nothing in this Statement of Policy shall be construed as waiving, limiting, or otherwise affecting:

(1) The power of the FDIC to take any action or to exercise any power not specifically addressed by this Statement of Policy;

(2) The power of the FDIC to take any action or pursue any legal powers, rights, or remedies regarding any transfer that was made with the intent to hinder, delay, or defraud the institution or its creditors, or in contemplation of insolvency, or that is a fraudulent transfer under applicable law; or

(3) Any causes of action, rights, or remedies, at law or in equity, not specifically addressed by this Statement of Policy, that the FDIC may have with respect to any contract entered into by any insured depository institution.

By order of the Board of Directors.

Dated at Washington, D.C., this 18th day of December 1998.

Federal Deposit Insurance Corporation

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–34518 Filed 12–29–98; 8:45 am]

BILLING CODE 6714–01–P

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, N.W., 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.: 232–011644.

Title: Sol y Mar/Frontier Services Space Charter and Sailing Agreement.

Parties: Sol y Mar, Frontier Liner Services.

Synopsis: Under the proposed agreement, Sol y Mar will charter space to Frontier Liner Services in the trade between ports in south Florida and ports in Guatemala and Honduras and via those ports to Nicaragua and El Salvador.

Agreement No.: 232–011645.

Title: Ro/Ro Vessel Chartering Agreement.

Parties: Companhia de Navegacao Norsul, NYKNOS Joint Service.

Synopsis: Under the proposed agreement, the parties are authorized to charter ro/ro vessels to each other, cross charter space, and coordinate sailings and port calls in the trade between U.S. Atlantic and Gulf ports and inland points and ports and points in Brazil, Argentina, Paraguay, and Uruguay.

By Order of the Federal Maritime Commission.

Dated: December 23, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–34512 Filed 12–29–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 2:00 P.M.—January 13, 1999.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: CLOSED.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 98–14—Shipping Restrictions, Requirements and Practices of the People's Republic of China.
2. Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–34670 Filed 12-28-98; 11:11 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background*. Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final approval under OMB delegated authority of the extension for three years, with major revision, of the following report:

Report title: Interagency Bank Merger Act Application.

Agency form number: FR 2070

OMB control number: 7100-0171

Frequency: On occasion

Reporters: Individuals or households; Businesses or other for-profit.

Annual reporting hours: Nonaffiliate—1,710; Affiliate—1,422. Total: 3,132 burden hours

Estimated average hours per response: Nonaffiliate--30; Affiliate--18

Number of respondents: Nonaffiliate--57; Affiliate--79.

Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 321, 1828(c), and 4804). Except for select sensitive items, this information collection is not given confidential treatment.

Abstract: State member banks are required to file this application prior to merging with any other insured depository institution, consolidating with an insured depository institution, acquiring assets from an insured depository institution (either directly or indirectly), or assuming the liability to pay any of an insured depository institution's deposits (either directly or indirectly).

This extension proposal includes a revision to make uniform the merger application forms currently submitted to the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors (Board)

(collectively, the Agencies) for both affiliated and nonaffiliated institutions. The form name is the Interagency Bank Merger Act Application. The Agencies need the information collected to insure that the proposed transactions are permissible under law and regulation and are consistent with safe and sound banking practices. The Agencies are required, for example, to consider financial and managerial resources, future prospects, convenience and needs of the community, community reinvestment, and competition.

Some of the Agencies will collect limited supplemental information in certain cases. For example, the OCC and OTS will collect information regarding CRA commitments, the Federal Reserve will collect information on debt servicing from certain institutions, and all Agencies will require additional information on the competitive impact of proposed mergers.

Current actions: On January 5, 1998, the Board granted initial approval of the proposal. A joint notice of the proposed action was published in the *Federal Register* on January 21, 1998 (63 FR 3182), and the comment period expired on March 23, 1998. The Agencies received five public comments from the Texas Department of Banking, the Independent Bankers Association of America, the National Community Investment Coalition, the Center for Community Change, and the Conference of State Bank Supervisors, as well as comments from staff at each agency. Most of the commenters suggested modifications to the forms and instructions. As a result of the comments, the application was further revised to include an ''Other'' category under the ''Filed Pursuant To'' section and information on Tier 3 capital (if any), the addresses of directors and senior executive officers, how the proposal will meet the convenience and needs of the community (including needs of the community under the applicable criteria of the Community Reinvestment Act, and debt servicing (if applicable). In addition, certain branch information requested in the initial proposal was eliminated. The additional changes proposed in response to the comments would not affect most applicants; on average for all applicants, the estimated burden would be unchanged. The other agencies submitted the same revised information collection to OMB for approval.

Board of Governors of the Federal Reserve System, December 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–34549 Filed 12–29–98; 8:45AM]

Billing Code 6210–01–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0031]

Proposed Collection; Comment Request Entitled Contractor Use of Government Supply Sources

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.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Government Supply Sources. The clearance currently expires on April 30, 1999.

DATES: Comments may be submitted on or before March 1, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, 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), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When it is in the best interest of the Government and when supplies and services are required by a Government contract, contracting officers may authorize contractors to use Government supply sources in performing certain contracts. Contractors placing orders under Federal Supply Schedules or Personal Property Rehabilitation Price Schedules must follow the terms of the applicable schedule. To place orders, firms will submit the initial FEDSTRIP or MILSTRIP requisitions or the Optional Form 347, a copy of the authorization to order, and a statement regarding authorization to the firm holding the schedule contract.

The information informs the schedule contractor that the ordering contractor is authorized to use this Government supply source and fills the ordering contractor's order under the terms of the Government contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *300*; responses per respondent, *7*; total annual responses, *2,100*; preparation hours per response, *.25*; and total response burden hours, *525*.

Obtaining copies of proposals: Requester may obtain a copy of the justification 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. 9000–0031, Contractor Use of Government Supply Sources, in all correspondence.

Dated: December 23, 1998.

Victoria E. Moss,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 98–34402 Filed 12–29–98; 8:45 am]

BILLING CODE 6820–34–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0032]

Proposed Collection; Comment Request Entitled Contractor Use of Interagency Motor Pool Vehicles

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.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractor Use of Interagency Motor Pool Vehicles. The clearance currently expires on April 30, 1999.

DATES: Comments may be submitted on or before March 1, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, 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), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

If it is in the best interest of the Government, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency motor pool vehicles and related services. Contractors' requests for vehicles must obtain two copies of the agency authorization, the number of vehicles and related services required and period of use, a list of employees who are authorized to request the vehicles, a listing of equipment authorized to be serviced, and billing instructions and address.

A written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of the motor pool vehicles and services not related to the performance of the contract is necessary before the contracting officer may authorize cost-reimbursement contractors to obtain interagency motor pool vehicles and related services.

The information is used by the Government to determine that it is in the Government's best interest to authorize a cost-reimbursement contractor to obtain, for official purposes only, interageny motor pool vehicles and related services, and to provide those vehicles.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *70*; responses per respondent, *2*; total annual responses, *140*; preparation hours per response, *.5*; and total response burden hours, *70*.

Obtaining copies of proposals: Requester may obtain a copy of the justification 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. 9000–0032, Contractor Use of Interagency Motor Pool Vehicles, in all correspondence.

Dated: December 23, 1998.

Victoria E. Moss,

Acting Director, Federal Acquisition Policy Division.

[FR Doc. 98–34403 Filed 12–29–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98M–0136, 98M–0217, 98M–0138, 98M–0327, 98M–0328, 98M–0219, 98M–0137, 98M–0404, 98M–0200, 98M–0140, 98M–0231, 98M–0187, 98M–0139, 98M–0201, 98M–0403, 98M–0162, 97M–0084, 98M–0329, 98M–0450, 98M–0451, 98M–0251, 98M–0507, 98M–0618, 98M–0604, 98M–0619, 96M–0678, 98M–0679, 98M–0715, 98M–0711, and 98M–0725]

Medical Devices; List of Premarket Approval Actions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval application (PMA) approvals. This list is intended to inform the public of the existence and the availability of summaries of safety and effectiveness of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Summaries of safety and effectiveness are available on the World Wide Web (WWW) at http://www.fda.gov/cdrh/pma page.html. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document, when submitting a written request.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet (http://www.fda.gov), by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of the PMA approvals and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a

PMA may be sought only by the applicant: in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of all PMA applications for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure as explained previously through August 12, 1998. There were no denial actions during this period. The list is in order by PMA number and provides the manufacturer's name, the generic name or trade name, and the approval date.

TABLE 1.—LIST OF APPROVAL PMA'S FROM APRIL 24, 1997, THROUGH AUGUST 12, 1998

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P940001/98M–0136	Gensia, Inc.	Genesa (R) System	September 12, 1997
P940015/98M–0217	Biomatrix, Inc.	Synvisc (R) Hylan GF 20	August 8, 1997
P940016/98M–0138	B. Braun of America, Inc.	Heparin-Induced Extracorporeal Precipitation (H.E.L.P.) System	September 19, 1997
P940025/98M–0327	Lobob Laboratories	Lobob R/RW Drop	April 30, 1998
P940026/98M90328	Lobob Laboratories	Rigid Gas Permeable Contact Lens Solution[1] and Labob C/D/S Cleaning Disinfecting Storage Solution	April 28, 1998
P950031/98M–0219	Lobob Laboratories	Lobob Cleaner	April 3, 1998
P960036/98M–0137	Mentor Corp.	Posterior Chamber Intraocular Lens	December 22, 1997
P960057/98M–0404	Gliatech, Inc.	Inhibitor, Peridural Fibrosis[1]	May 27, 1998
P970002/98M–0200	Alliance Medical Technologies, Inc.	Monostrut Cardiac Value Prosthesis[1]	September 30, 1997
P970003/98M–0140	Cyberonics, Inc.	Neurocybernetic Prothesis System NE–LYJ Stimulator, Autonomic Nerve, Implanted for Epile	July 16, 1997
P970012/98M–0231	Medtronic, Inc.	Medtronic, Kappa Pulse Generator[1]	January 30, 1998
P970017/98M–0187	Hologic, Inc.	Acoustic Bone Densitometer Sahara Clinical Bone Sonometer	March 12, 1998
P970021/98M–0139	Gynecare, Inc.	Thermal Balloon Endometrial Ablation Thermachoice Uterine Balloon Therapy (UBT) System OB–MNB–Device, Thermal Ablation, Endometrial	December 12, 1997
P970038/98M–0201	Hybritech, Inc.	Tandem Free PSA Assays[1]	March 10, 1998
P970044/98M–0403	Dornier Medical Systems, Inc.	Transurethral Microwave Thermotherapy System, Dornier Urowave Thermotherapy System, GU–MEQ–System, Hyperthermia, RF/Microwave Benign Post	May 29, 1998
P970052/98M–0162	Cardiovascular Dynamics, Inc.	Fact, Arc, Lynx, and Guardian Balloon Coronary Dilatation Catheters Percutaneous Transluminal Coronary Angioplasty (PTCA) CV–LOX–Catheters, Transluminal Coronary Angioplasty, PE	February 20, 1998
P930016/S003/97M–0084	VISX, Inc.	Excimer Laser for Ophthalmic Use	April 24, 1997
P930034/S009/98M–0329	Summit Technology, Inc.	SVS APEX Plus Excimer Laser Workstation and Emphasis Disc OP–LZS–LASER, System, Excimer	March 11, 1998

TABLE 1.—LIST OF APPROVAL PMA'S FROM APRIL 24, 1997, THROUGH AUGUST 12, 1998—Continued

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P960013/98M–0450	Pacesetter, Inc.	Tendril DX Models 1388 T/K Endocardial, Steroid Eluting Screw-In Pacing Leads and Ventritex Assure AFS Models 7010 T/K Endocardial Steroid Eluting Screw In Pacing Leads	June 20, 1997
P960042/98M–0451	Spectranetics Corp.	12 French Laser Sheath Kit	December 9, 1997
P950009/S002/98M–0251	Neopath, Inc.	Autopap Primary Screening System	May 5, 1998
P960013/98M–0450	St. Jude Medical	Locator Steerable Stylet Model 4036	June 15, 1998
P960042/001/98M–0451	Spectranetics Corp.	12 French Outer Sheath	June 16, 1998
P970062/98M–0507	BMT, Inc.	Genestone 190 Lithotripter	June 24, 1998
P970058/98M–0618	R2 Technology, Inc.	M 1000 Image Checker	June 26, 1998
P960011/98M–0604	Bio-Technology General Corp.	Biolon 1% Sodium Hyaluronate Viscoelastic Surgical Aid Fluid	July 16, 1998
P960018/98M–0619	Healthcare Products Plus, Inc.	The Needlyzer The Needle Destroyer Model ND 2	July 16, 1998
P950005/98M–0678	Cordis Webster, Inc.	Cordis Webster Diagnostic/Ablation Deflectable Tip Catheter	July 22, 1998
P980015/98M–0679	Biomedical Disposal, Inc.	Sharpx Needle Destruction Unit	August 6, 1998
P970040/98M–0715	Lunar	Achilles & Ultrasonometer	June 26, 1998
P970051/98M–0711	Cochlear Corp.	Nucleus 24 Cochlear Implant System	June 25, 1998
P960034/98M–0725	Pharmacia & UpJohn	Cleon Heparin Surface Modified (ASM) Ultraviolet light	August 12, 1998

[1] This means generic name.

Dated: December 15, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–34347 Filed 12–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1020]

Draft Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse To Be Used by the Consumer; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to Be Used By The Consumer.'' This draft guidance addresses screening devices sold over-the-counter for testing drugs of abuse. This type of device is intended for use in the home setting as a screening test for any, or any combination, of the following five substances in urine: Amphetamine/methamphetamine, cocaine, cannabinoids, opiates, and phencyclidine.

DATES: Written comments concerning this draft guidance must be received by March 30, 1999.

ADDRESSES: Submit written requests for single copies on a 3.5'' diskette of the draft guidance entitled ''Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to Be Used By The Consumer'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

Over the last several years, FDA has worked to clarify the regulation of products for use in the home setting intended to screen for drugs of abuse. On September 17, 1997, FDA released for comment a draft guidance document entitled ''Points to Consider for Approval of Home Drugs of Abuse

Screening Kits.'' On September 25, 1997, FDA held an open public meeting of the Clinical Chemistry and Clinical Toxicology Panel (the Panel), an FDA advisory committee, in order to discuss and receive comments on the September 1997 guidance. Based upon comments and recommendations received at this meeting from the Panel, the public, and manufacturers, FDA has revised the September 1997 guidance.

II. Significance of Guidance

This draft guidance represents the agency's current thinking on drugs of abuse home screening kits. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both. This guidance is not final nor is it in effect at this time. This draft guidance replaces the September 17, 1997, guidance.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to Be Used By the Consumer'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 2209 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes ''Guidance for Premarket Submissions for Kits for Screening Drugs of Abuse to Be Used By the Consumer,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

IV. Comments

Interested persons may, on or before March 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 15, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–34346 Filed 12–29–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Proposed Collection; Comment Request; Young Drivers Intervention Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION:

Title: Young Drivers Intervention Study.

Type of Information Collection Request: New.

Need and Use of Information Collection: The purposes of this study are (1) to determine the impact of parental actions to monitor and control their adolescents' driving behavior on adolescent driving behavior and motor vehicle crashes, and (2) to test the efficacy of educational persuasive communications in promoting parental restriction of their adolescent's risky driving behavior. The specific questions addressed in this study include: (1) Are parents' perceptions about dangers associated with adolescent driving associated with parental involvement in their adolescent's driving experiences? (2) Is a parent-teen driving agreement an effective way of increasing parental involvement and reducing adolescent risky driving? (3) Does increased parental involvement reduce risky driving behaviors and decrease traffic tickets and crashes among adolescents?

A sample of adolescents applying for their learner's permit and one of their parents will be recruited through department of motor vehicles offices and driver's education courses in two states. In each state, 1600 parent-adolescent dyads will be recruited and interviewed four times over the course of the 2-year prospective observational study. During the initial interview, consent, demographic information, and contact information will be obtained. Within two weeks, parents and their adolescents will be interviewed over the telephone. Parents will be asked about their expectations and parenting practices regarding their adolescents' driving behaviors. Adolescents will be asked about their driving practices, their parents' rules and restrictions regarding driving, and other psychosocial variables. These same variables will be assessed again during telephone interviews with both parents and adolescents at six, twelve, and eighteen months intervals. The driving records for each adolescent will be obtained from the state motor vehicle administration and examined at the end of the 24-month period.

Parent-teen dyads will be randomly assigned to the basic information comparison condition or the special-intervention treatment condition. Parents in the comparison condition will receive standard information about the move toward graduated licensing in their state and the high risk related to adolescent driving. Parents in the special intervention will receive personalized educational material in the mail, including a parent-teen driving agreement and an educational videotape. During the 24 month period of the study, dyads will be contacted three more times: (1) when adolescents apply for their provisional/full license, (2) 6 months after provisional/full licensure, and (3) 12 months after provisional/full licensure. At each time, parents and adolescents will be interviewed over the telephone regarding parenting practices related to involvement in and restriction of adolescents' driving experience, and adolescents' driving behaviors.

Frequency of Response: data will be collected 4 times over a two-year period; two times each year for two years.

AFFECTED PUBLIC: PARENTS AND THEIR TEENAGE CHILDREN

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Parents	3,200	2	0.5	3,200
Adolescents	3,200	2	0.5	3,200

The annualized cost to respondents is estimated at $64000 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, Division of Epidemiology, Statistics, and Prevention Research, National Institute of Child Health and Human Development, Building 6100, 7B05, 9000 Rockville Pike, Bethesda, Maryland, 20892–7510, or call non-toll free number (301) 496–5674 or E-mail your request, including your address to <bm79K@nih.gov>.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: December 17, 1998.

Ben Fulton,

Executive Officer, NICHD.

[FR Doc. 98–34528 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Susan S. Rucker, J.D., Patent and licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone 301/496–7057 ext. 245; fax: 301/402–0220; e-mail: sr156v@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

cDNA Encoding A Gene, BOG (B5T Over-Expressed Gene), And Its Protein Product

SS Thorgeirsson, JT Woitach, M Zhang (NCI) Serial Nos. 60/079,567 filed 27 Mar 98 and 60/075,922 filed 25 Feb 98.

These applications describe a newly identified gene, termed BOG (B5t Over-Expressed Gene), and its protein product. Rat, murine and human homologs of the gene are described. Human BOG has been mapped to chromosome 20 and murine BOG to chromosome 2.

The applications describe the binding of the BOG gene product with the gene product pRb, of the well-known tumor suppressor gene RB (retinoblastoma susceptibility gene). The complex formed between Rb and BOG typically does not contain E2F–1 *in vivo.* This binding property suggests that cells which are transformed/transfected with cDNA or other functional nucleotide sequences which encode the BOG gene product will be useful as tools for studying cell cycle control and oncogenesis.

Studies using rat liver epithelial cell (RLE) lines which are resistant to the growth inhibitory effects of TGF-β1 and primary liver tumors have been shown to over-express BOG. In addition, when normal RLE continuously over-express BOG the cells become transformed and the transformed cells are able to form hepatolblastoma-like tumors when transplanted into nude mice. BOG antisense nucleotides can be used to restore sensitivity to TGF-β in cells which over-express BOG. Therefore, biologics derived from BOG may be useful as diagnostics or therapeutics.

Thymosin α1 Promotes Tissue Repair, Angiogenesis and Cell Migration

KM Malinda, HD Kleinman (NIDCR), RK Maheshwari, and A Goldstein, Serial Nos. 09/186,476 filed 04 Nov 98, 60/069,590 filed 12 Dec 97, and 60/065,032 filed 10 Nov 97.

These applications describe the use of the compound thymosin α1 as an agent for promoting wound healing. Thymosin α1 is a small, 28 mer, peptide which can be made by chemical synthesis or recombinantly. Studies using a punch model for wounds in rats have shown that providing thymosin α1 either intraperitoneally or topically accelerates wound healing. In addition, thmosin α1 has been shown to promote endothelial and keratinoctye cell migration *in vivo* and to promote angiogenesis *in vivo.*

This work has been published in *J. Immunol.* 160(2); 1001–6 (Jan 15, 1998).

Double-Stranded RNA Dependent Protein Kinase Derived Peptides To Promote Proliferation of Cells and Tissues in a Controlled Manner

DP Bottaro (NCI), R Petryshyn (EM), Serial No. PCT/US97/14350 filed 29 Jul 97 and 60/023,307 filed 30 Jul 97

These applications describe a number of peptides having a minimum size of eight (8) amino acids which act as

antagonists of PKR (Protein Kinase R). PKR is a critical enzyme in the interferon signaling pathway which has been implicated in cross-talk between the interferon signaling pathway and the TNF-α apoptosis signaling pathway. The peptide antagonists described herein may be use to inhibit apoptosis or to stimulate cell proliferation under conditions of cell cycle arrest, reduced growth or quiescence leading to possible applications in wound healing, cell culture, or skin grafts.

A portion of this work has appeared in Virology 222 (1): 193–200 (August 1, 1996).

AAV4 Vector and Uses Thereof

JA Chiorini, RM Kotin, B Safer (NHLBI), Serial No. 60/025,934 filed 09 Sept 96 and PCT/US97/16266

These patent applications describe the cloning and characterization of the full-length genome of adeno-associated virus type 4 (AAV4). AAV4, like other members of the AAV family may be useful as a vector for gene therapy.

When compared to AAV2 AAV4 may be better suited as a vector due to its larger size which permits efficient encapsidation of a larger recombinant genome, its greater buoyant density which allows for easier separation of AAV4 from contaminating helper virus. Other characteristics of AAV4 which distinguish it from AAV2 and AAV3 are its expanded promoter region, its distinct capsid protein, its different tissue tropism and its ability to bind hemagluttinin (HA). While AAV4 has several distinguishing characteristics from AAV2 and AAV3 it also shares significant homology, greater than 90%, with the Rep proteins of AAV2 and AAV3.

Studies using a lacZ reporter gene suggest that AAV4 can transduce human, monkey, and rat cells. Other studies comparing transduction efficiencies in a number of cell lines, competition cotransduction experiments and the effect of trypsin on transduction efficiency suggest that the cellular receptor for AAV4 is distinct from that of AAV2.

This research has been published in J. Virology 71(9): 6823–33 (Sept 1997) and as PCT Publication 98/11244 (March 19, 1998).

Dated: December 21, 1998.

Jack Spiegel, Ph.D.,

Director, Division of Technology Development and Transfer Office of Technology Transfer.

[FR Doc. 98–34529 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Hemophilia and vWD Resource

Date: January 13, 1999

Time: 11:00 AM to 1:00 PM

Agenda: To review and evaluate grant applications

Place: Rockledge Bldg. II, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: David T. George, PHD, MD, Scientific Review Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Building II, Room 7188, 6701 Rockledge Drive, MD 20892–7924, 301/435–0288

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel GenHAT

Date: January 25, 1999

Time: 7:00 PM to 9:00 PM

Agenda: To review and evaluate grant applications

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies, SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel IRAS Family Study: Genetics of Insulin Resistance

Date: January 25–26, 1999

Time: January 25, 1999, 9:00 PM to 10:00 PM

Agenda: To review and evaluate grant applications

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877

Time: January 26, 1999, 8:00 AM to 9:00 AM

Agenda: To review and evaluate grant applications

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel MDECODE Cooperative Research Program

Date: January 26, 1999

Time: 9:00 AM to 10:00 AM

Agenda: To review and evaluate grant applications

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877

Contact Person: Anthony M. Coelho, PHD, Leader, Clinical Studies, SRG, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 23, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34533 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council

Date: February 4–5, 1999

Open: February 4, 1999, 8:30 AM to 2:00 PM

Agenda: For discussion of program policies and issues

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892

Closed: February 4, 1999, 2:00 PM to adjournment

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892

Contact Person: Ronald G. Geller, PHD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 435–0260.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research, 93.837, Heart and Vascular Diseases Research; 93.838; Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 23, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34534 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: January 25–26, 1999.

Open: January 25, 1999, 1:00 PM to 3:30 PM.

Agenda: The meeting of the full Council will be open to the public for general discussion and program presentations.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Closed: January 25, 1999, 3:30 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Solar Building Room 3C20, 6003 Executive Boulevard, Rockville, MD 20892, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: January 25–26, 1999.

Closed: January 25, 1999, 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Open: January 26, 1999, 8:30 AM to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Solar Building Room 3C20, 6003 Executive Boulevard, Rockville, MD 20892, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: January 25–26, 1999.

Closed: January 25, 1999, 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Open: January 26, 1999, 8:30 AM to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Solar Building Room 3C20, 6003 Executive Boulevard, Rockville, MD 20892, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: January 25–26, 1999.

Closed: January 25, 1999, 8:30 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room A, 45 Center Drive, Bethesda, MD 20892.

Open: January 26, 1999, 8:30 AM to adjournment.

Agenda: Open program advisory discussions and presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: John J. McGowan, Director, Division of Extramural Activities, NIAID, Solar Building Room 3C20, 6003 Executive Boulevard, Rockville, MD 20892, 301–496–7291.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 23, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34530 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 98–23, R01 Review.

Date: December 30, 1998.

Time: 10:00 AM to 11:45 AM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–25, P01 Review.

Date: January 4–5, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada Inn, 8400 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: H. George Hausch, PhD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–11, R44 Review.
Date: January 5, 1999.
Time: 10:00 AM to 11:45 PM.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–06, R01 Review.
Date: January 13, 1999.
Time: 1:00 PM to 2:45 PM.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–28, R03 Review.
Date: January 15, 1999.
Time: 1:00 PM to 2:45 PM.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–30, P01 Review.
Date: January 26–27, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: H. George Hausch, PhD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–24, P01 Review.
Date: January 28–29, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.
Contact Person: H. George Hausch, PhD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.
Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–03, RFA DE98–008, Genetic Mechanisms in Oral Cancer.
Date: January 31–February 2, 1999.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: H. George Hausch, PhD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 23, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34532 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: January 26, 1999.
Time: 8:30 AM to 5:00 PM
Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps/obstacles to progress.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Solar Building, Room A217, 6003 Executive Boulevard, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 18, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34535 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB C (J3)
Date: January 15, 1999
Time: 1:00 PM to Adjournment
Agenda: To review and evaluate grant applications
Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call)
Contact Person: Dane E. Matsumoto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology

and Hematology Research, National Institutes of Health, HHS)

Dated: December 18, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34536 Filed 12–19–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel

Date: January 7, 1999

Time: 11:30 AM to 1:30 PM

Agenda: To review and evaluate grant applications

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call)

Contact Person: Sheila O'Malley, MA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel

Date: January 8, 1999

Time: 11:00 AM to 12:00 PM

Agenda: To review and evaluate grant applications

Place: Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, (Telephone Conference Call)

Contact Person: Sheila O'Malley, MA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–34537 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–D (J1) December 15, 1998, at 12:45 P.M. to December 15, 1998, 5:00 P.M., National Institutes of Health, Natcher Building, Room 6AS37F, Bethesda, Maryland 20892, which was published in the **Federal Register** on November 30, 1998 (63 FR 65802).

This meeting is being amended to reflect meeting date and time change. The new date and time are December 22, 1998 at 2:00 P.M. until 5:00 P.M. The meeting is closed to the public.

Dated: December 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–34539 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.

Date: January 11–12, 1999.

Time: 8:30 AM to 1:00 PM.

Agenda: Recent Experiments and Experiences in Streamlining the Peer Review Process.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Samuel Joseloff, PHD, Executive Secretary, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7768, Bethesda, MD 20892, (301) 435–0691.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 23, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–34531 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 23, 1998

Time: 11:00 AM to 12:00 PM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 24, 1998

Time: 9:30 AM to 10:30 AM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: J. Scott Osborne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 24, 1998

Time: 10:30 AM to 11:30 AM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: J. Scott Osborne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel

Date: December 28, 1998

Time: 10:00 AM to 11:00 AM

Agenda: To review and evaluate grant applications

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: J. Scott Osborne, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 18, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–34538 Filed 12–29–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated National Environmental Policy Act Document for Antioch Dunes National Wildlife Refuge, Contra Costa County, California

SUMMARY: The Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and National Environmental Policy Act (NEPA) document for Antioch Dunes National Wildlife Refuge. This notice advises the public that the Service intends to gather information necessary to prepare a CCP and environmental documents pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA. The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service CCP policy to advise other agencies and the public of our intentions, and obtain suggestions and information on the scope of issues to include in the environmental documents.

DATES: To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received on or before January 29, 1999.

ADDRESSES: Send written comments or requests to be added to the mailing list to the following address: Planning Team Leader—Antioch Dunes NWR, California/Nevada Refuge Planning Office, US Fish and Wildlife Service, 2233 Watt Avenue, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Leslie Lew, Planning Team Leader, (916) 979–2085.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended, mandates that all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP will guide management decisions and identify refuge goals, long-range objectives, and management strategies for achieving refuge purposes. The planning process will consider many elements, including habitat and wildlife management, habitat protection, cultural resources protection, and environmental effects. Public input into this planning process is very important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the refuges and how the Service will implement management strategies.

The Service is soliciting information from the public via written comments. The Service will send out special mailings, newspaper articles, and announcements to people who are interested in the refuge. These mailings will provide information on how to participate in public involvement for the CCP. Comments received will be used to develop goals, key issues, and habitat management strategies. Additional opportunities for public participation will occur throughout the process, which is expected to be completed in late 1999. Data collection has been initiated to create computerized mapping, including vegetation, topography, habitat types and existing land uses.

The refuge was established to protect a unique riverine dune ecosystem and three endangered species. The 55 acres owned by the Service, along with the 12 acres owned by Pacific Gas and Electric that are adjacent to the refuge, support the last known natural populations of the Antioch dunes evening primrose, Contra Costa wallflower, and Lange's metalmark butterfly. The refuge was the first National Wildlife Refuge to be created to protect endangered plants and insects.

In the early 1900's, the isolated dune habitat in the delta began to experience a dramatic change as human development expanded. The easily-accessible sand was harvested to make bricks. Large-scale sand mining and industrial development fragmented the sand dune habitat until only a small portion of the original ecosystem remained. Non-native grasses and vegetation encroached on the sand dunes to crowd the few remaining endangered plants. By the time the refuge was established, only a few acres of remnant dune habitat supported the last natural populations of Antioch Dunes evening-primrose, Contra Costa wallflower, and Lange's metalmark butterfly. The refuge was open for public use until 1986 when it was closed to protect the plants from trampling and wildfire. The refuge consists of two units that are managed to prevent the extinction of these unique species. Intensive management has already resulted in the highest Lange's metalmark butterfly population in 20 years.

The refuge purpose is to conserve fish, wildlife, and plants which are listed as endangered or threatened species. (16 U.S.C. § 1534 (Endangered Species Act of 1973).

The outcome of this planning process will be a CCP to guide refuge management for the next 15 years, and associated NEPA document.

It is estimated that a draft CCP and NEPA document will be made available for public review in spring 1999.

Dated: December 21, 1998.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations, US Fish and Wildlife Service, Sacramento, California.

[FR Doc. 98–34499 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for Construction and Operation of a Residential and Commercial Development on Approximately 471.5 Acres of the 714-Acre Balfour Tract, Austin, Travis County, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: BRE/Baldwin, L.P. (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–003593–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a residential and commercial development on approximately 471.5 acres of the 714-acre Balfour Tract located in Austin, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and the National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before January 29, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Sybil Vosler, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by appointment only during normal business hours (8:00 to 4:30). Written data or comments concerning the application and EA/HCP should be submitted to the Supervisor, Ecological Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Rd., Austin, Texas 78758. Please refer to permit number TE–003593–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the above Austin Ecological Service Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant: BRE/Baldwin, L.P. plans to construct a residential and commercial development on the 714-acre tract and will preserve a minimum of 121 acres of golden-cheeked warbler habitat on-site. An additional 124 acres of golden-cheeked warbler habitat will be purchased and preserved off-site. The construction will be located at the Balfour Tract, located approximately 1-mile east of the City of Lakeland Park (across the Colorado River) and approximately 3 miles northeast of the Village of Bee Cave and roughly 11 miles west of the downtown City of Austin. The preserved areas will be maintained in their natural state and title or conservation easement granted in perpetuity and will be held by a non-profit conservation organization or governmental agency approved by the Service.

Alternatives to this action were considered; however, increased development would result in greater levels of take of golden-cheeked warblers, and selling or not developing the subject property with federally listed species present was not economically feasible.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico, Albuquerque, New Mexico.

[FR Doc. 98–34496 Filed 12–29–98; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Bureau of Land Management

Preparation of an Environmental Impact Statement for Federal Permits Associated With Construction and Operation of the High Desert Power Plant Project, Victorville, San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior (Lead Agency); Bureau of Land Management, Interior (Cooperating Agency).

ACTION: Notice of intent; announcement of meeting.

SUMMARY: The Fish and Wildlife Service, with the Bureau of Land Management as a cooperator, intends to prepare an Environmental Impact Statement. This Impact Statement will consider the Federal actions associated with the High Desert Power Plant Project. Specifically, the Fish and Wildlife Service proposes to issue an Endangered Species Act permit to the High Desert Power, Limited Liability Company, and other project proponents for take of the desert tortoise (*Gopherus agassizii*), a threatened species under the Federal Endangered Species Act, and for the future take, should it be needed, of the Mohave ground squirrel (*Spermophilus mohavensis*) and the burrowing owl (*Athene cunicularia*), a threatened species and a sensitive species, respectively, under the California Endangered Species Act. Take of these species would be incidental to the construction and operation of a natural gas power plant, electric lines, gas lines, and water lines associated with the High Desert Power Project. As part of the proposed action for the project, the Bureau of Land Management proposes to issue a right-of-way grant under Section 28 of the Mineral Leasing Act of 1920 to the Southwest Gas Corporation for the construction and maintenance of a natural gas pipeline through Federal lands designated as desert tortoise critical habitat and managed by the Bureau.

The purpose of scoping is to obtain suggestions and information from other agencies and the public on the range of issues and alternatives to be considered in preparation of the Environmental Impact Statement. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. This notice is provided pursuant to the Council on Environmental Quality regulations for

implementing the procedural provisions of the National Environmental Policy Act (40 CFR 1501.7 and 1508.22).

DATES: Oral and written comments will be accepted at public meetings to be held on January 28, 1999, 3:00 p.m. to 5:00 p.m. and 7:00 p.m. to 9:00 p.m. Written comments should be received on or before February 1, 1999.

ADDRESSES: The meetings will be held at the Mojave Desert Air Quality Management District Office, Board Chambers (2nd floor), 15428 Civic Drive, Victorville, California. Comments should be addressed to Diane Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Denise Washick, Fish and Wildlife Biologist, at the above address (telephone 805–644–1766).

SUPPLEMENTARY INFORMATION:

Project Description

The High Desert Power Plant Project is located on a 25-acre parcel in the northeast corner of the Southern California International Airport, formerly part of George Air Force Base, in the City of Victorville, San Bernardino County, California. The project site is bordered by Perimeter Road on the east, Southern California International Airport taxiways to the west, abandoned bunkers adjacent to Phantom Street on the south, and existing evaporation ponds on the north. The project site is located in Section 24, Township 6 North, Range 5 West. The site has been previously graded and leveled.

The High Desert Power Project, Limited Liability Company (lead project proponent), and others propose to construct and operate a 680- to 830-megawatt natural gas-fueled electricity generation power plant on a 25-acre site located in the northeast corner of the Southern California International Airport. In addition to the power plant, an additional 24 acres, which is currently graded, will be used as a staging area. The project includes the construction of 7 water extraction wells within the Mojave River watershed. The linear facilities associated with the project include a 7-mile electrical transmission line; a 3.5-mile natural gas pipeline; and construction of 2 water pipelines with pipeline #1 measuring 2.5 miles and pipeline #2 measuring 6.5 miles. These linear facilities are all to be constructed within private lands.

As part of the project, the High Desert Power Project, Limited Liability Company, proposes to prepare a habitat conservation plan to be submitted to the Fish and Wildlife Service as part of an application for an Endangered Species Act incidental take permit for the desert tortoise, Mohave ground squirrel, and burrowing owl. The latter two species would be listed on the permit with a delayed effective date. Should these species be listed under the Federal Endangered Species Act in the future, the permit for incidental take would become effective concurrent with their listing.

Construction of a 32-mile natural gas pipeline through Federal lands designated as desert tortoise critical habitat and managed by the Bureau of Land Management are also part of the High Desert Power Plant Project. The Bureau proposes to issue a right-of-way permit under the Federal Land Policy and Management Act to Southwest Gas Corporation for the construction and maintenance of this pipeline.

Supplemental Reports

The High Desert Power Project, Limited Liability Company, has prepared several reports required by the California Energy Commission, including an Application for Certification. The Commission is serving as the lead licensing and environmental review agency in accordance with the California Environmental Quality Act. The Commission required preparation of a Draft Biological Resources Mitigation Implementation Plan and a Draft Erosion Control and Revegetation Plan for the High Desert Power Plant Project. These plans have been prepared for the project site and all linear facilities including the 32-mile natural gas pipeline which is also being permitted as part of the High Desert Power Plant Project. Copies of the reports may be requested by contacting Ms. Amy Cuellar at Resource Management International, Inc., 3100 Zinfandel Drive, Suite 600, P.O. Box 15516, Sacramento, California 95670–1516, or calling (916)–852–1300. Copies may also be reviewed at the following libraries:

California Energy Commission, Energy Library, 1516 Ninth Street, Sacramento, California 95814; California State Library, Government Publication Section, 914 Capitol Mall, Room 400, Sacramento, California 95814; Fresno County Library, Central Headquarters, 2420 Mariposa Street, Fresno, California 93721; Humboldt Library, 421 ''I'' Street, Eureka, California 95501; Norman Feldheym Central Library, 555 West Sixth Street, San Bernardino, California 92415; San Bernardino County Library, Adelanto Branch, 11744 Bartlett Avenue, Adelanto, California 92301; San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392; San Diego Public Library, 920 E Street, San Diego, California 92101; San Francisco Public Library, Civic Center, San Francisco, California 94102; UCLA, University Research Library, Public Affairs Service, 405 Hilgard Avenue, Los Angeles, California 90024; California Depository Specialist, Acquisitions—Green Library, Stanford University, Stanford, California 94305–6004.

Dated: December 15, 1998.

Elizabeth Stevens,

Acting Manager, California/Nevada Operations Office, Fish and Wildlife Service.

Dated: December 14, 1998.

Tim Read,

Field Manager, Bureau of Land Management, Barstow Field Office.

[FR Doc. 98–34371 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given of the current list of tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below are lists of federally acknowledged tribes in the contiguous 48 states and in Alaska. The list is updated from the last such list published in October 23, 1997 (62 FR 55270), to include name changes or corrections. There have been no new tribal entities added to the list. The listed entities are acknowledged to have the immunities and privileges available

to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Recieve Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Mission Indians of the Augustine Reservation, California
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community of the Sault Ste. Marie Band of Chippewa Indians, Bay Mills Reservation, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Rancheria of Pomo & Pit River Indians of California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Indian Tribe of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Indian Tribe, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Indian Nation of the Yakama Reservation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California
Death Valley Timbi-Sha Shoshone Band of California
Delaware Tribe of Indians, Oklahoma
Delaware Tribe of Western Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community of Wisconsin Potawatomi Indians, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa & Chippewa Indians of Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California

Guidiville Rancheria of California
Hannahville Indian Community of Wisconsin Potawatomie Indians of Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin (formerly known as the Wisconsin Winnebago Tribe)
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Huron Potawatomi, Inc., Michigan
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community of L'Anse and Ontonagon Bands of Chippewa Indians of the L'Anse Reservation, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Indian Tribe of Oregon
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of the Lac Courte Oreilles Reservation of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians of Michigan
Little Traverse Bay Bands of Odawa Indians of Michigan
Los Coyotes Band of Cahuilla Mission Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation of Arizona, New Mexico & Utah
Nez Perce Tribe of Idaho
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Wisconsin
Onondaga Nation of New York
Osage Tribe, Oklahoma
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Indian Tribe of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Rancheria of Pomo Indians of California
Pit River Tribe, California (includes Big Bend, Lookout, Montgomery Creek & Roaring Creek Rancherias & XL Ranch)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians of Michigan
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Rancheria of Pomo Indians of California
Prairie Band of Potawatomi Indians, Kansas

Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Juan, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians of the Red Lake Reservation, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California (formerly known as the Coast Indian Community of Yurok Indians of the Resighini Rancheria)
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California (formerly known as the Covelo Indian Community)
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan, Isabella Reservation
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California
Santee Sioux Tribe of the Santee Reservation of Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida, Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota (Prior Lake)
Sheep Ranch Rancheria of Me-Wuk Indians of California
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Soboba Band of Luiseno Mission Indians of the Soboba Reservation, California
Sokaogon Chippewa Community of the Mole Lake Band of Chippewa Indians, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota (formerly known as the Devils Lake Sioux Tribe)
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
St. Croix Chippewa Indians of Wisconsin, St. Croix Reservation
St. Regis Band of Mohawk Indians of New York
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge-Munsee Community of Mohican Indians of Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of Diegueno Mission Indians of California
Table Bluff Reservation—Wiyot Tribe, California
Table Mountain Rancheria of California
Te-Moak Tribes of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres-Martinez Band of Cahuilla Mission Indians of California
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Luiseno Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians of Oklahoma
Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California
Upper Sioux Indian Community of the Upper Sioux Reservation, Minnesota

Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wyandotte Tribe of Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs

Village of Afognak
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Native Village of Atka
Asa'carsarmiut Tribe (formerly Native Village of Mountain Village)
Atqasuk Village (Atkasook)
Village of Atmautluak
Native Village of Barrow Inupiat Traditional Government (formerly Native Village of Barrow)
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Village
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chanega (aka Chenega)
Chalkyitsik Village
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Native Village of Chignik
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Kluckwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chistochina
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clark's Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council (formerly Native Village of Dillingham)
Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Evansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Native Village of Kasigluk
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
Agdaagux Tribe of King Cove
King Island Native Community
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
New Koliganek Village Council (formerly Koliganek Village)
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council (formerly Mentasta Lake Village)
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village

Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Toyagungin Tribe of Sand Point Village
Rampart Village
Village of Red Devil
Native Village of Ruby
Village of Salamatoff
Organized Village of Saxman
Native Village of Savoonga
Saint George (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Sheldon's Point
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Native Village of Toksook Bay
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Qawalangin Tribe of Unalaska
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

Dated: December 21, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–34476 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P) Notice for Publication AA–10534]

Alaska Native Claims Selection; Correction

AGENCY: Bureau of Land Management.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of December 7, 1998, concerning a decision to issue a conveyance to Sealaska Corporation. The document contained an incorrect legal description.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, 907–271–3226.

Correction

In the **Federal Register** of December 7, 1998, in FR Doc. 98–32386, on page 67492, in the third column, on the eleventh line of the notice, correct ''U.S. Survey No. 10271'' to read ''U.S. Survey No. 12071''.

Dated: December 21, 1998.

Patricia K. Underwood,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 98–34540 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–JA–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–020–09–1110–00–241A]

Raptor Workshop for the Northeast Planning Area of the NPR–A, Northern Alaska

A public workshop will be held in Fairbanks on February 2 and 3, 1999, to discuss the potential impacts on raptors of oil and gas development in the 4.6-million-acre Northeast Planning Area of the National Petroleum Reserve in Alaska.

The workshop, which will involve nationally recognized experts in raptor management, will consider extensive literature on raptor disturbance and ensure that all activities that may affect raptor productivity have been adequately addressed.

The Northeast Planning Area of the NPR–A borders the Colville River from a point across the river from Ninuluk Bluff to the mouth of the Itkillik River. The management plan for the area includes all federally authorized activities, including oil/gas development. An oil/gas lease sale, planned for April or May of 1999, will offer all tracts along the Colville River within the planning area. Among the stipulations that will be attached to the lease sale and any resulting development is one that would prohibit any permanent oil and gas surface facilities, except essential pipeline or road crossings, within one mile of the west bluffs of the Colville River; within one mile of the Kikiakrorak and Kogosukruk rivers, including several of the latter's tributaries; and within one-half mile of the Ikpikpuk River. Further, road crossings within the Colville River setback would be strictly prohibited.

The BLM-sponsored workshop will be held at the Princess Hotel, 4477 Pikes Landing Road, Fairbanks, Alaska, from 8 a.m. to 5 p.m. on February 2 and 3, 1999. The workshop is open to the public.

For further information, contact Dave Yokel, BLM-Northern Field Office, 1150 University Ave., Fairbanks, AK 99709–3899. Tel: 907–474–2314 or 1–800–437–7021; email: dyokel@ak.blm.gov.

Dated: December 21, 1998.

Timothy J. Grinnell,

Acting Team Lead, Arctic Management Unit.

[FR Doc. 98–34500 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–014–09–1430–01; HAG99–0059]

Notice of Modified Competitive Sale of Public Lands in Klamath County, Oregon (OR 53189)

SUMMARY: The following land is classified as suitable for modified competitive sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 43 U.S.C. 1719, and Section 7 of the Taylor Grazing (43 U.S.C. 315f). The land will be sold at no less than the fair market value of $11,600.00. The land will not be offered for sale until at least 60 days after this notice.

Willamette Meridian, T. 39 S., R. 12 E.
Section 27 SE¼SE¼
T. 39 S., R. 12 E.
Section 34 NE¼NE¼

The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, which ever occurs first.

This land is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by the sale.

Purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property, or a corporation authorized to own real estate in the state in which the land is located.

Modified competitive procedures are being used pursuant to 43 CFR 2711.3–2. Bidding for this parcel is open to all qualified bidders; however, Glenn Barrett, grazing lessee, adjacent land owner and sale proponent, will be given the right to meet the highest bid received and purchase the property. To exercise the right to meet the high bid, Mr. Barrett must submit an initial bid for at least the minimum appraised price. Mr. Barrett must follow the sealed bid procedures described below. If his bid is not the high bid, he will be offered an opportunity to match the high bid. If he does not submit an initial bid, he will lose his right to match the high bid.

Sealed written bids, delivered or mailed must be received by the Bureau of Land Management Klamath Falls Field Office, 2795 Anderson Ave. Building 25 Klamath Falls, OR 97603 prior to 10:00 a.m. on Wednesday March 24, 1999. Each written sealed bid must be accompanied by a bid deposit in the form of a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior, BLM. The bid deposit must be for at least 10 percent of the amount bid and enclosed in a sealed envelope clearly marked, in the lower left hand corner, ''Bid for Public Land Sale OR 53189, Klamath County Oregon, March 24, 1999.'' *Personal checks are not acceptable*. The written sealed bids will be opened at 1:00 p.m. March 24, 1999 and an apparent high bidder declared. The balance of the purchase price must be paid within 180 days after the sale. If the balance is not paid by the required date, the deposit will be forfeited and the parcel may be re-offered to the public until sold or withdrawn from the market.

The mineral rights, except oil, gas and geothermal, are also being offered with the land. The high bidder will be required to pay a $50.00 non-refundable filing fee for the mineral rights when paying the balance of the purchase price.

The terms, conditions, and reservations applicable to this sale are as follows:

1. A right-of-way for ditches and canals will be reserved to the United States in under 43 U.S.C. 945.
2. All oil and gas and geothermal resources in the land will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.
3. The mineral interests being offered for conveyance have no known mineral value. A bid submitted will constitute an application for conveyance of the mineral estate, with the exception of the oil and gas and geothermal interests which will be reserved to the United States in accordance with Section 209 of the Federal Land Policy and Management Act of 1976.
4. Patents will be issued subject to all valid existing rights and reservations of record.
5. The sale will be subject to such rights for public road purposes as Klamath County may have in Gale Road pursuant to R. S. 2477 (43 U.S.C. 932).

If land identified in this notice is not sold it will be offered competitively on a continuing basis until sold or until December 31, 1999. Sealed bids will be accepted at the Klamath Falls Field Office during regular business hours. All bids received will be opened on the first Wednesday of each month, beginning April 7, 1999. To be considered, bids must be received by 10:00 a.m. on the day of bid opening.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Klamath Falls Field Office 2795 Anderson Ave. Building 25 Klamath Falls, OR 97603.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Klamath Falls Field Office at the above address. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final action of the Department of the Interior. Questions should be directed to Tom Cottingham at the above address or by phone at 541/885–4135.

Dated: December 16, 1998.

Larry E. Frazier,

Acting Field Manager, Klamath Falls Resource Area.

[FR Doc. 98–34505 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Posting of Invitation for Bids on Crude Oil From Federal Leases and State of Wyoming Properties in Wyoming

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Invitation for Bids on Federal and State of Wyoming crude oil in the State of Wyoming.

SUMMARY: The Minerals Management Service (MMS) will post on MMS's Internet Home Page, and make available in hard copy, a public competitive offering of approximately 3,810 barrels per day (bpd) of crude oil, to be taken as royalty-in-kind (RIK) from a combination of Federal properties and State of Wyoming (State) properties in Wyoming's Bighorn and Powder River Basins through an Invitation For Bids (IFB), Number 3984.

DATES: The IFB will be posted on MMS's Internet Home Page on or about January 4, 1999. Bids will be due to MMS and State of Wyoming, at the posted receipt location for both, on or about February 4, 1999. MMS and the State of Wyoming will notify successful bidders on or about February 12, 1999. The Federal Government and the State will begin actual taking of awarded royalty oil volumes for delivery to

successful bidders for a 6-month period beginning on or about April 1, 1999.

ADDRESSES: The IFB will be posted on MMS's Home page at http://www.mms.gov under the icon ''What's New.'' The IFB may also be obtained by contacting Ms. Betty Estey at the address in the **FURTHER INFORMATION** section. Bids should be submitted to the address provided in the IFB.

FOR FURTHER INFORMATION CONTACT: For additional information on MMS's RIK pilots, contact Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, N.W., MS 4230, Washington D.C. 20240; telephone number (202) 208–3827; fax (202) 208–3918; e-mail Bonn.Macy@mms.gov. For additional information concerning the IFB document, terms, and process for Federal leases, contact Ms. Betty Estey, Minerals Management Service, MS 2510, 381 Elden Street, Herndon, VA 20170–4817; telephone number (703) 787–1352; fax (703) 787–1009; e-mail Betty.Estey@mms.gov. For additional information concerning the IFB document, terms, and process for State of Wyoming properties, contact Mr. Harold Kemp, Office of State Lands and Investments, Herschler Building, 3rd Floor West, 122 West 25th Street, Cheyenne, WY 82002–0600; telephone number (307) 777–6643; Fax: (307) 777–5400; Email: hkemp@missc.state.wy.us.

SUPPLEMENTARY INFORMATION: The offering of crude oil in the IFB is a continuation of Phase I of the first of MMS's three planned RIK pilots. The other two RIK pilots will be in the Gulf of Mexico. The State's objective in this pilot and MMS's objective in all its pilots is to identify the circumstances in which taking oil and gas royalties as a share of production (RIK) is a viable alternative to the agencies' usual practice of collecting oil and gas royalties as a share of the value received by the lessee for sale of the production. The Wyoming pilot is a joint project with the State of Wyoming expected to last 2 to 3 years.

The sale will involve approximately 3,810 bpd of crude oil from 183 Federal and State properties located in Wyoming's Bighorn and Powder River Basins. RIK oil from these Federal properties was previously offered under IFB No. 3947 for delivery to purchasers for production months October 1998 through March 1999. The State properties are being added to this IFB.

Purchasers may bid on individual properties and/or on the entire packages of Wyoming sweet crude oil (1,135 bpd), Wyoming general sour crude oil (820 bpd), or Wyoming asphaltic sour crude oil (1,855 bpd). Bids will be due as specified in the IFB on or about February 04, 1999; successful bidders will be notified on or about February 12, 1999.

The following are some of the additional details regarding the offerings that will be posted in the IFB on or about January 4, 1999.

- List of specific properties;
- For each property, royalty rate(s), average daily royalty volume, quality, transportation method (truck/pipe), and current transporter and operator;
- Bid basis;
- Reporting requirements;
- Terms and conditions; and
- Contract format.

The internet posting and availability of the IFB in hard copy are being announced in oil and gas trade journals as well as in this **Federal Register** notice.

Dated: December 23, 1998.

Anthony Gallagher,

Acting Associate Director for Policy and Management Improvement.

[FR Doc. 98–34479 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 19, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 14, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Carroll County

Tall Pines Motor Inn, US 62, Eureka Springs, 98001603

CALIFORNIA

Orange County

Anaheim Union Water Co. Canal and Pomegranate Road, 23901 and 23905 Pomegranate Rd., Yorba Linda vicinity, 98001604

Placer County

Colfax Passenger Depot, Main St. and Railroad Ave., Colfax, 98001605

COLORADO

Denver County

Denver Orphans' Home, 1501 Albion St., Denver, 98001606

Weld County

Windsor Town Hall, 116 5th St., Windsor, 98001599

MAINE

Franklin County

Orgone Energy Observatory, W. side of Dodge Pond Rd., .65 mi. N. of Jct. ME 4/16, Rangeley vicinity, 98001602

York County

Limington Historic District, Jct. of ME 11 and ME 117, Limington, 98001601

MISSISSIPPI

Coahoma County

Friars Point Historic District, Along Second St., Friars Point, 98001608

MISSOURI

Osage County

Huber's Ferry Farmstead Historic District, Jct. US 50 and US 63, Jefferson City vicinity, 98001609

Sullivan County

Green City Railroad Depot, 202 Lincoln St., Green City, 98001610

St. Louis Independent City Schmitt, Anton, House, 7727 S. Broadway, St. Louis, 98001600

NEW YORK

Erie County

Buffalo City Hall, 65 Niagara Sq., Buffalo, 98001611

Kibler High School, 284 Main St., Tonawanda, 98001612

Rider-Hopkins Farm and Olmstead Camp, 12820 Benton Rd., Sardinia, 98001613

Stone Farmhouse, 60 Hedley Pl., Buffalo, 98001614

New York County

Frying Pan Shoals Lightship No. 115 (lightship), Pier 63 North River, New York, 98001615

Oswego County

Fulton Public library, 160 S. First St., Fulton, 98001616

Otsego County

Women's Community Club of South Valley, 472 Kirshman Hill Rd., South Valley, 98001617

Sullivan County

Anshei Glen Wild Synagogue, Glen Wild Road, Glen Wild, 98001618

B'nai Israel Synagogue, NY 52, Woodbourne, 98001620

Bikur Cholim B'nai Israel Synagogue, Old White Lake Turnpike at NY 55, Swan Lake vicinity, 98001619

Chevro Ahavath Zion Synagogue, Cold Spring Rd., Monticello vicinity, 98001621

Ulster County

Spring Glen Synagogue, Old NY 209, Spring Glen, 98001622

SOUTH CAROLINA

Greenville County

Davenport House, 100 Randall St., Greer, 98001623
Turner, R. Perry, House, 211 N. Main St., Greer, 98001624
Turner, Robert G., House, 305 N. Main St., Greer, 98001625

[FR Doc. 98–34508 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lower Mokelumne River Restoration Program, Lower Mokelumne River, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact report/environmental impact statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) Reclamation (Reclamation) proposes to participate in a joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Lower Mokelumne River Restoration Program. Woodbridge Irrigation District (WID) will be the lead agency under the California Environmental Quality Act (CEQA). The project is intended to provide NEPA and CEQA clearance for implementing fish passage improvements at Woodbridge Dam and fish screen improvements at Woodbridge Canal and the North San Joaquin Water Conservation District diversion. Programmatic clearance is being sought for the riparian restoration and riparian diversion screening elements of the program. This work is being funded through a Category III grant provided by the CALFED Bay-Delta Program (CALFED) and administered by Reclamation.

DATES: Reclamation will seek public input on alternatives, concerns, and issues to be addressed in the EIR/EIS through scoping meetings to be held in January 1999. The schedule of the scoping meetings is as follows:

- Thursday, January 7, 1999, from 7 p.m. to 9 p.m. in Lodi, California.
- Wednesday, January 6, 1999, from 7 p.m. to 9 p.m. in Sacramento, California.

If special services are needed at the meetings, contact Mr. Anders Christensen at the address or telephone number listed below no later than December 30, 1998.

Written comments on the scope of alternatives and impacts to be considered should be sent to WID at the address below by [insert date 35 days after date of publication in the **Federal Register**]. Reclamation estimates that the draft EIR/EIS will be available for public review in summer 1999.

ADDRESSES: Meeting locations are: Lodi—Carnegie Forum at 305 West Pine Street in Lodi, California Sacramento—Jones & Stokes Associates, Inc., Auditorium at 2600 V Street in Sacramento, California.

Written comments on the project scope should be sent to Anders Christensen, Woodbridge Irrigation District, 18777 N. Lower Sacramento Road, Woodbridge, CA 95258.

FOR FURTHER INFORMATION CONTACT: Anders Christensen at (209) 369–6808 or Buford Holt of Reclamation at (530) 275–1554.

SUPPLEMENTARY INFORMATION: WID provides irrigation water for approximately 40,000 acres of farmland near the city of Lodi. WID's rights are based on riparian use before 1914 and other appropriative rights. Flashboards are placed in the WID dam (Woodbridge Dam) in late February or early March to begin filling Lodi Lake and to allow water to flow into Woodbridge Canal for delivery to WID customers. The flashboards are usually removed from the dam when the irrigation season ends in early November.

The Lower Mokelumne River Restoration Program (LMRRP) was developed to implement important elements from resource management plans prepared by CALFED, the U.S. Fish and Wildlife Service (FWS), and the California Department of Fish and Game (DFG). The goal of the LMRRP is to substantially increase fall-run chinook salmon and steelhead populations, enhance critical and limiting aquatic habitats, and restore riparian ecosystem integrity and diversity. The LMRRP comprises four major elements:

- Element 1: Improve fish passage.
- Element 2: Improve fish screening at Woodbridge and North San Joaquin Water Conservation District diversions.
- Element 3: Install or upgrade fish screens on riparian diversions.
- Element 4: Enhance riparian corridor.

WID and the city of Lodi applied for a CALFED Category III grant to fund the LMRRP. CALFED has provided preliminary funding for final design and for environmental clearance and permitting for Elements 1 and 2 of the LMRRP. WID and Reclamation will prepare the EIR/EIS using this funding. Because final design for Elements 3 and 4 has not yet been funded, it is anticipated that only programmatic environmental clearance will be sought for these two elements.

Element 1: Improve fish passage

The LMRRP fish passage element seeks to improve upstream and downstream fish passage on the Lower Mokelumne River and to provide the opportunity to pass water of varying temperatures and pulse flows downstream of WID's diversion while maintaining WID's access to its water rights. Proposed alternative methods for implementing Element 1 are described below under ''Alternatives Being Considered.''

Element 2: Improve fish screening at Woodbridge Canal and North San Joaquin Water Conservation District Diversions

Improving fish screening at Woodbridge Canal and North San Joaquin Water Conservation District diversions would upgrade the fish screening facilities at the two largest diversions on the Lower Mokelumne River below Camanche Dam. New screens would be designed to meet all applicable DFG and National Marine Fisheries Service (NMFS) criteria to ensure effective fish passage and minimize entrainment and impingement.

Element 3: Install or Upgrade Fish Screens on Riparian Diversions

The riparian fish screening element would provide state-of-the-art fish screens at 58 unscreened or underscreened riparian diversions on the Lower Mokelumne River between Camanche Dam and its confluence with the Cosumnes River near Thornton. All new screens would be designed to meet all applicable DFG and NMFS criteria to ensure effective fish passage and minimize entrainment and impingement.

Element 4: Enhance Riparian Corridor

The riparian corridor enhancement element includes bank erosion control, riparian plantings, the creation of buffer zones, and other techniques to restore and protect riparian vegetation to provide shaded riverine aquatic habitat for fish, reduce water temperatures, increase food production, and serve as a barrier between the river and adjacent land uses.

Alternatives Being Considered

The project sponsors are considering alternatives to improve fish passage while maintaining WID's access to its

water rights. A first-phase screening process was conducted to narrow a list of 14 alternatives to a list of 5 feasible alternatives to be analyzed in the EIR/EIS. These alternatives include:

1. *No action.* Under the No-Action Alternative, no physical changes to the structure or functions of Woodbridge Dam or the Woodbridge fish screen and bypass system would be made. The dam, fish screen, and bypass system would continue to operate as they currently operate.

2. *Build new fish passage facilities at Woodbridge Dam and replace fish screen bypass at Woodbridge Canal.* Under this alternative, the problems with Woodbridge fish passage facilities would be corrected. Because upgrading existing facilities to state-of-the-art specifications is not feasible, new facilities would be built on the right abutment (facing downstream) of the dam. Another element of this alternative is the construction of a predator-isolation berm. This berm would extend east to west across the channel that connects the river to the oval, static portion of Lodi Lake. The berm would assist in separating predator species in the static portion of Lodi Lake from salmon and steelhead in the river.

3. *Remove Woodbridge Dam and pump water into Woodbridge Canal.* Under this alternative, Woodbridge Dam would be removed and water to serve WID customers would be obtained by pumping water from the Mokelumne River into the Woodbridge Canal. A pump station with a state-of-the-art fish screen would be constructed near the existing diversion structure. Additionally, a river control structure would need to be constructed to direct river flows toward the pumps and to keep the pumps submerged.

4. *Replace Woodbridge Dam with a new dam incorporating state-of-the-art fish passage facilities (proposed project).* The proposed project involves removing the existing Woodbridge Dam and constructing an adjustable weir dam immediately upstream. This dam would include new state-of-the-art fish passage facilities, a downstream hydraulic control system to manage tailwater elevations at the entrances to the fish ladders, a gated system for the downstream release of water from different strata for temperature control, and the capability of providing releases across a wider spectrum of flow levels (0–800 cubic feet per second [cfs]) without spillage across the dam face to improve responsiveness to fish flow needs. It would also include the predator-isolation berm described under Alternative 2.

5. *Shorten period of flashboard placement in Woodbridge Dam and install diversion pumps.* This alternative is based on the assumption that significant improvements to fish migration can be achieved by removing the flashboards at Woodbridge Dam from March through June to improve downstream migration of juvenile salmon and steelhead. To accommodate WID's need to divert water during that period, diversion pumps would be installed and a river control structure would be constructed to direct river flows toward the pumps and to keep the pumps submerged. This alternative would also include the predator-isolation berm described under Alternative 2.

The project sponsors are also considering the following option which could be implemented with any of the alternatives that include a dam.

Construct a stratification sill in front of the WID diversion structure and a new deepwater discharge outlet in the dam. This option is based on the assumption that a shortage of cool water below Woodbridge Dam is a limiting factor for salmon during their smolt out-migration life stage and that such cool water is available in Lodi Lake. The intent is to provide warm water for the Woodbridge Canal and to allow cool water to flow downstream of Woodbridge Dam. The cool water would also be used to guide fish away from the diversion to the bypass canal that would lead them to the river below the dam.

Scoping Process

Scoping is an early and open process designed to determine the significant issues and alternatives to be addressed in the EIR/EIS. Following are significant issues that have been identified: fisheries, riparian and wetland habitats, wildlife, water quality, aesthetics, recreation, and public health and safety.

Special Services

If special services are required at the meeting, contact Anders Christensen. Please notify Mr. Christensen as far in advance of the meetings as possible but no later than December 30, 1998, to enable WID to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is not available.

Dated: December 22, 1998.

Jeffrey McCracken,

Acting Regional Director.

[FR Doc. 98–34501 Filed 12–29–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35). The Commission has requested OMB approval of this submission by COB January 5, 1999.

EFFECTIVE DATE: December 22, 1998.

PURPOSE OF INFORMATION COLLECTION: This information collection is for use by the Commission in connection with investigation No. 332–401, Pianos: Economic and Competitive Conditions Affecting the U.S. Industry, instituted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), following receipt of a request from the Committee on Ways and Means of the U.S. House of Representatives. The Commission expects to deliver the results of its investigation to the Committee on May 12, 1999.

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* two.

(2) *Title of form:* A Study of the Economic and Competitive Conditions Affecting the U.S. Piano Industry—Questionnaires for U.S. Producers and Importers.

(3) *Type of request:* new.

(4) *Frequency of use:* single data gathering.

(5) *Description of Respondents:* U.S. firms which produce or import pianos.

(6) *Estimated number of respondents:* 8 (Producer questionnaire); 22 (Importer questionnaire).

(7) *Estimated total number of hours to complete the forms:* 1,500 hours.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of agency submissions to OMB in connection with this request may be obtained from David Lundy, Project Leader, 5M Division, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3439). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–7340). Copies of any comments should also be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal, (telephone no. 202–205–1810).

By order of the Commission.

Issued: December 23, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34482 Filed 12–29–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Notice of Determination.

EFFECTIVE DATE: December 21, 1998.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act, as amended (19 U.S.C. 2703 note), which concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries, requires the Commission to determine annually the U.S. domestic market for fuel ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market determination made by the Commission is to be used to establish the ''base quantity'' of imports that can be imported with a zero percent local feedstock requirement. The base quantity to be used by the U.S. Customs Service in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For the 12-month period ending September 30, 1998, the Commission has determined the level of U.S. consumption of fuel ethyl alcohol to be 1.3 billion gallons. Seven percent of this amount is 94.1 million gallons (these figures have been rounded). Therefore, the base quantity for 1999 should be 94.1 million gallons.

FOR FURTHER INFORMATION CONTACT: Mr. Lowell Grant (202) 205–3312 in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

BACKGROUND: For purposes of making determinations of the U.S. market for fuel ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports, in March 1990. The Commission uses official statistics of the U.S. Department of Energy to make these determinations as well as the PIERS database of the Journal of Commerce, which is based on U.S. export declarations.

Section 225 of the Customs and Trade Act of 1990 (Public Law 101–382, August 20, 1990) amended the original language set forth in the Steel Trade Liberalization Program Implementation Act of 1989. The amendment requires the Commission to make a determination of the U.S. domestic market for fuel ethyl alcohol for each year after 1989.

By order of the Commission.

Issued: December 22, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–34481 Filed 12–29–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with 42 U.S.C. § 9622(d) and Departmental policy at 28 CFR § 50.7, notice is hereby given that on December 9, 1998, a proposed Amended Consent Decree in *United States* v. *Amoco Chemical Co., et al.*, Civil Action No. H–892734, was lodged with the United States District Court for the Southern District of Texas, Houston Division. The proposed Amended Consent Decree modifies the obligations of the Defendants, under the Consent Decree entered in this action in 1991, to implement a remedial action for the Brio Superfund site, located near Friendswood, Harris County, Texas, to reflect the change in the remedial action adopted by the U.S. Environmental Protection Agency (''EPA'') in a Record of Decision dated July 2, 1997. EPA modified the required remedial action by eliminating the requirements for excavation and on-site incineration of contaminated materials and adding requirements for an ''enhanced containment'' remedy, including a barrier wall to prevent future off-site migration of contaminants.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed Amended Consent Decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Amoco Chemical Co., et al.*, DOJ #90–11–2–325.

The proposed Amended Consent Decree may be examined at the offices of the United States Attorney for the Southern District of Texas, Houston Division, 910 Travis Street, Suite 1500, Houston, Texas, 77208 and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Anne Foster, Assistant Regional Counsel). A copy of the Consent decree may also be examined at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $14.25 (25 cents per page reproduction charge for decree, without attachments) payable to ''Consent Decree Library''. When requesting copies, please refer to *United States* v. *Amoco Chemical Co., et al.*, DOJ #90–11–2–325.

Joel Gross,

Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. 98–34637 Filed 12–28–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. § 9622(d), notice is hereby given that a proposed Consent Decree in

United States v. *General Motors Corporation and Niagara Mohawk Power Corporation,* Civ. NO. 98 CV 1927 (NAM), DOJ #90–11–2–2/2, was lodged in the United States District Court for the Northern District of New York on December 15, 1998. The Consent Decree resolves the liability of defendants under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. §§ 9606(a) and 9607(a), relating to the Pollution Abatement Services Superfund Site in Oswego, New York (the ''Site'').

Under the proposed decree Defendants agree to perform EPA's fourth and final operable unit for the Site as set forth in EPA's Record of Decision issued on September 30, 1997 (''OU4''), which requires the monitoring of polychlorinated bi-phenyls in sediments and biota at creeks and wetlands at the Site. Defendants also agree to pay the first $150,000 in Oversight Costs and any future Response Costs incurred in connection with OU4. In exchange for the work and payment of response costs, Defendants will receive a covenant not to sue for response actions at the Site subject to certain reservations of rights.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *General Motors Corp. et al.,* Civ. No. DOJ #90–11–2–2/2.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of New York, James Foley U.S. Courthouse, 445 Broadway, Room 231, Albany, New York 12207; at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $32.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–34639 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Pro-Tec Coatings Company,* Civil Action No. 3:98CV7749, was lodged with the United States District Court for the Northern District of Ohio on December 15, 1998, contemporaneously with the filing of a complaint. This proposed consent decree would resolve the United States' civil claims against Pro-Tec Coatings Company for violations of the Clean Air Act, 42 U.S.C. § 7401 *et seq.,* at its Leipsic, Ohio facility.

Under the terms of the proposed consent decree, Pro-Tec will pay a civil penalty of $1.05 million, obtain specified air pollution permits, and install required air pollution control equipment.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Pro-Tec Coatings Company,* Civil Action No. 3:98CV7749, and Department of Justice Reference No. 90–5–2–1–06019.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Ohio, Four Seagate, Suite 308, Toledo, Ohio 43604; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please refer to the referenced case and case numbers and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–34638 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on December 16, 1998, a proposed consent decree in *United States* v. *Rohm & Haas Company, Inc., et al.,* Civil Action No. 85–4386 (JHR), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States alleged under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9607, that, *inter alia,* Owens-Illinois, Inc. (OI) was liable for the federal government's costs in responding to the release or threatened release of hazardous substances at the Lipari Landfill Superfund Site in Mantua Township, Gloucester County, New Jersey (the Site). Under the terms of the proposed consent decree, OI will pay the United States the sum of $13.3 million dollars with respect to the United States' claims. This settlement, in conjunction with earlier settlements in this matter, will result in the United States recovering $119.8 million in cash and work in relation to the Site, a recovery of over 87% of total Site costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Rohm & Haas, Inc., et al.,* Civil Action No. 85–4386, D.J. Ref. 90–11–3–86.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 402 East State Street, Trenton, New Jersey 08606, at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York 10007–1866, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. A copy of the proposed consent decree may be obtained in person or by mail from the

Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $9.00 (25 cent per page reproduction cost).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–34640 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on August 21, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of exending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Allaire Corporation, Cambridge, MA; Cloudscape, Inc., Oakland, CA; and Commerce One, Walnut Creek, CA have joined the Consortium as Core members to this venture. Also, Tandem Computer, Cupertino, CA; Digital Equipment Corp., Palo Alto, CA; Release Software, Menlo Park, CA; Inverse Network Technology, Santa Clara, CA; and Strategic Response, Palo Alto, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notifiication pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (50 FR 45012).

The last notification was filed with the Department on July 29, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34641 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Commercenet Consortium

Notice is hereby given that, on March 19, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''The Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Able Solutions, Battleground, WA; and Adobe Systems, Inc., San Jose, CA have joined the Consortium as Portfolio members. Pandesic LLC, Sunnyvale, CA; and E–FOREX, Brisbane, CA have joined the Consortium as Core members to this venture. Also, Onesite Solutions, Minneapolis, MN; Idea Center, Inc., Las Vegas, NV; Cowles Media Company, Minneapolis, MN; and Mitsubishi Electric Corp., Tokyo, JAPAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on February 20, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34645 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on April 20, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Banc One Point of Sale Services Corp., Columbus, OH; and First Technology Federal Credit Union, Beaverton, OR have joined the Consortium as Portfolio members. Electronic Commerce Media, Inc., Saratoga, CA has joined as an In-Kind member. WH Brady, Milwaukee, WI; Techwave, Inc., Seattle, WA; CNAPRO, New York, NY; Synopsis, Inc., Mountain View, CA; and Booz, Allen & Hamilton, Inc., McLean, VA have joined the Consortium as Core members. Maryland Procurement Office, Fort George, MD; and National Security Agency, Fort Meade, MD have joined the Consortium as Executive Sponsor members to this venture. Also, TSI International Software Ltd., Wilton, CT; Cyberbusiness Association Japan, Tokyo, JAPAN; Acquion, Inc., Greenville, SC; and Premenos, Concord, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on March 19, 1998. A

notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34646 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on May 19, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Lucent Technologies, Middletown, NJ has joined the Consortium as a Corporate Sponsor member. eCharge Corporation, Seattle, WA; Calico Technologies, San Jose, CA; Science Applications International Corp., McLean, VA; and nCipher, Inc., Andover, MA have joined the Consortium as Core members to this venture. Also, Maryland Procurement Office, Fort George, MD; National Security Agency, Fort Meade, MD; Surety Technologies, Chatham, NJ; Terisa Systems, Los Altos, CA; Sift, Inc., Sunnyvale, CA; Time Warner, New York, NY; Saqqara Systems, Sunnyvale, CA; Japan Research Institute, Tokyo, JAPAN; Kokusai Denshin Denwa Co., Ltd. (KDD), Tokyo, JAPAN; Fujitsu Limited-Japan, Tokyo, JAPAN; Cybercash, Vienna, VA; American Express, New York, NY; Fujitsu Limited-USA, Santa Clara, CA; Pitney Bowes, Shelton, CT; NTT Data Communications-Japan, Tokyo, JAPAN; Intranet Partners, Santa Clara, CA; US Postal Service, Washington, DC; Marshall Industries, San Diego, CA; Oracle Corporation, Redwood Shores, CA; Citibank, New York, NY; Ameritech, Chicago, IL; Bank of America, San Francisco, CA; Union Bank, Monterey Park, CA; and NTT Data Communications-USA, Palo Alto, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on April 20, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34647 Filed 12–25–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on June 22, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Price Waterhouse LLP, New York, NY; and EC Cubed, Wilton, CT have joined the Consortium as Corporate Portfolio members. Current Analysis, Sterling, VA has joined the Consortium as an In-Kind member. Boise Cascade Office Products, Itasca, IL; Jazz It, Inc., Austin, TX; Trade'Ex, Tampa, FL; and ZD Studios, Needham, MA have joined the Consortium as Core members to this venture. Also, InsWEB, San Mateo, CA; Toshiba Corp.-USA, San Jose, CA; France Telecom, San Francisco, CA; WIPRO, Santa Clara, CA; BASF, Morris Plains, NJ; and Signal Internet Technologies, Pittsburgh, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on May 19, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34648 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on July 29, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), CommerceNet Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ipnet Solutions, Newport Beach, CA; Comm-Press Technologies, Inc., Irving, TX; Cyclone Software Corporation, Scottsdale, AZ; and Netscape Communications Corp., Mountain View, CA have joined the Consortium as Corporate Portfolio members. Adventura Systems ASA, Oslo, NORWAY has joined the Consortium as a Core member to this venture. Also, Ignite Technologies, Los Altos, CA; Tiaa-Cref, New York, NY; Korea Information & Communications Co., Yeongdungpo-Ku, Seoul, KOREA; Unix System Laboratories De Mexico, S.A. de C.V, Mexico City, Mexico; Waltrip & Associates, Sacramento, CA; NEC Corporation, Minato-ku, Tokyo, JAPAN; Mohr Davidow Ventures, Menlo Park, CA; Litlenet, LLC, Lowell, MA; Equifax, Tampa, FL; Groupe Bull Worldwide Information Systems-USA, Foster City, CA; Justsystem-Japan, Tokushima, JAPAN; Justsystem-USA, Menlo Park, CA; Starpoint Software, Inc., Cupertino, CA; Oracle Corporation,

Redwood Shores, CA; GTE, Needham, MA; Ensemble Solutions, Fairfield, NJ; Dynamicweb Enterprises, Inc., Fairfield, NJ; Cable and Wireless PLC, Menlo Park, CA; and Borland, Stanford, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 31, 1994 (50 FR 45012).

The last notification was filed with the Department on June 22, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34649 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Chipcard Alliance

Notice is hereby given that, on June 10, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Global Chipcard Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are American Express, New York, NY; Banksys S.A., Brussels, BELGIUM; Bell Canada, Toronto, Ontario, CANADA; British Telecom, Uxbridge, UNTIED KINGDOM; Chipper Netherlands, Hoofddorp, NETHERLANDS; Citicorp Development, New York, NY; Deutsche Telekom, Lindenfels, GERMANY; Elcotel, Inc., Sarasota, FL; Gemplus, Gemenos Cedez, FRANCE; Giesecki & Devrient America, Reston, VA; GTE, Dallas, TX; IBM, San Jose, CA; KPN Telecom BV, The Hague, NETHERLANDS; Landis & Gyr, Geneva, SWITZERLAND; Mondex, San Francisco, CA; NCR Netherlands N.V., Amsterdam Zuidoost, NETHERLANDS; Nortel, Calgary, Alberta, CANADA; ORGA, Paderborn, GERMANY; Protel, Lakeland, FL; Schlumberger Smart, North Austin, TX; Siemens Components, Munich, GERMANY, SPT Telecom, Praha, CZECH REPUBLIC; Telecom Eireann, Dublin, IRELAND; Telekom Malaysia, Selangor Darul, MALAYSIA; Telstra, Sydney, AUSTRALIA; U.S. West, Seattle, WA; and Verifone, Alpharetta, GA. The nature and objectives of the venture are to provide a vehicle for the acceleration of the introduction of worldwide, regional wide interoperable products and services related to the use of integrated circuit cards by the adoption of voluntary international standards to assure widespread acceptance by vendors and consumers of products and services that can function interoperably in an open network architecture in world markets.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34643 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microelectronics and Computer Technology Corporation

Notice is hereby given that, on August 28, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Microelectronics and Compute Technology Corporation has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Raytheon Company, Lexington, MA; Science Applications International Corporation (''SAIC''), La Jolla, CA; NASA–Ames, Moffett Field, CA; Lockheed Martin, Orlando, FL; Eastman Kodak, Rochester, FL; Hughes Research Lab, (HRL, L.L.C.), Malibu, CA; and Nortel, Ottowa, CANADA have been added as parties to this venture. Also, Hughes Aircraft Company and Bell Communications Research (''Bellcore'') have been dropped as parties to this venture.

The Hughes Aircraft Company share in MCC has been transferred to Raytheon Company, effective on June 11, 1998. The Bell Communications Research (''Bellcore'') share in MCC was transferred to Science Applications International Corporation (''SAIC'') effective on June 18, 1998. NASA–Ames has joined the Quest Project and the Object Infrastructure Project. Lockheed has joined the Object Infrastructure Project, Year 2. Eastman Kodak has joined the Low Cost Portables Project; HRL, L.L.C. has joined the LCP Project. Raytheon Company has joined the SSEP Project and Nortel has joined the Virtual Prototyping (ProReal) Project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Microelectronics and Computer Technology Corporation intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, Microelectronics and Computer Technology Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on March 18, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34642 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor

Notice is hereby given that, on March 23, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI''): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a

Magnetostrictive Sensor has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CTI Alaska, Inc. has been purchased by ASCG Inspection, Inc., Anchorage, AK and the contract has been assigned to ASCG Inspection Inc. effective February 16, 1998 and ASCG Inspection Inc. is now a participant.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute (''SwRI''): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor intends to file additional written notification disclosing all changes in membership.

On October 19, 1995, Southwest Research Institute (''SwRI''): Joint Industry Program—Development of an Instrument for Corrosion Detection in Insulated Pipes Using a Magnetostrictive Sensor filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 23, 1996 (61 FR 7020).

The last notification was filed with the Department on October 8, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 19, 1998 (63 FR 133433).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–34644 Filed 12–29–98; 8:45 am]

BILLING CODE 4401–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Request for the Return of Original Document(s).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the Federal Register on October 14, 1998 at 63 FR 55141, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information is should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Request for the Return of Original Document(s).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–884. Records Operations, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information provided will be used by the INS to determine whether a person is eligible to obtain original document(s) contained in an Alien File.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 2,500 responses at 15 minutes (.25) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 23, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 98–34559 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Immigration User Fee.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 14, 1998 at 63 FR 55141, allowing for a 60-day public comment period. No

comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points;

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement without change of a previously approved collection.

(2) Title of the Form/Collection: Immigration User Fee.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: No Agency Form Number. Office of Finance, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. The information requested from commercial air carriers, commercial vessel operators, and tour operators is necessary for effective budgeting, financial management, monitoring, and auditing of User Fee collections.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 325 responses at 15 minutes (.25) per response for reporting, in addition to 25 respondents at 10 hours per response for record keeping.

(6) An estimate of the total public burden (in hours) associated with the collection: 331 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 23, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 98–34560 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application to Preserve Residence for Naturalization.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 13, 1998 at 63 FR 43417, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Application to Preserve residence for Naturalization.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–470. Adjudications Divisions, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. The information will be used to determine whether an alien who intends to be absent from United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 300 responses at 15 minutes (.25) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 23, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 98–34561 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Medical Examination of Aliens Seeking Adjustment of Status.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 11, 1998 at 63 FR 45875, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until January 29, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Medical Examination of Aliens Seeking Adjustment of Status.

(3) Agency Form Number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–693, Examinations Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. This information collection will be used by the INS in considering eligibility for adjustment of status under section 209, 210, 245 and 245A of the Immigration and Nationality Act.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 800,000 responses at 1.5 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,200,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: December 23, 1998.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 98–34562 Filed 12–29–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collections without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until March 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit

Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposals for the following collections of information:

OMB Number: 3133–0032.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Records Preservation. Part 749 of NCUA Regulations directs each credit union to store copies of their members' share and loan balances away from the credit union's premises.

Respondents: All Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 11,127.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Quarterly.

Estimated Total Annual Burden Hours: 22,254.

Estimated Total Annual Cost: $1,112,700.

OMB Number: 3133–0058.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Credit Committee Records. The standard Federal Credit Union (FCU) Bylaws require an FCU to maintain records of its loan approvals and denials.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 6,888.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Other. Twice a month.

Estimated Total Annual Burden Hours: 55,104.

Estimated Total Annual Cost: $926,298.

OMB Number: 3133–0080.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Special Meetings of Federal Credit Union (FCU) Board. The standard FCU Bylaws require a written request from a majority of the FCU's directors to the FCU's president in order for the FCU to hold a special meeting of directors.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 6,888.

Estimated Burden Hours Per Response: 2.5 hours.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 275.6.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0117.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Designation of Low Income Status. Credit unions that serve predominantly low income members must receive a low income designation from NCUA before they can accept deposits from all sources.

Respondents: Certain credit unions that serve predominantly low income members.

Estimated No. of Respondents/ Recordkeepers: 15.

Estimated Burden Hours Per Response: 15 hours.

Frequency of Response: Other. Once.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Cost: $3,600.

OMB Number: 3133–0052.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Federal Credit Union (FCU) Membership Applications and Denials. Article II, section 2 of the FCU Bylaws requires persons applying for membership in an FCU to complete an application. The Federal Credit Union Act directs the FCU to provide the applicant with written reasons when the FCU denies a membership application.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 1,722.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 1,722.

Estimated Total Annual Cost: N/A.

OMB Number: 3133–0130.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Written Reimbursement Policy. Each Federal Credit Union (FCU) must draft a written reimbursement policy to ensure that the FCU makes payments to its director within the guidelines that the FCU has established in advance and to enable examiners to easily verify compliance by comparing the policy to the actual reimbursements.

Respondents: All Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 6,897.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: Other. Once and update.

Estimated Total Annual Burden Hours: 3,462.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on December 21, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–34519 Filed 12–29–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following reinstatement with change for an expired information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). The notice was orginially published in the **Federal Register** on August 19, 1998. No comments relating to the collection were received. This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 29, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen (see above).

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0015.

Form Numbers: NCUA 4000, 4001, 4008, 4012, 4015, 4401, 9500, 9501, and 9600.

Type of Review: Reinstatement with changes of a previously approved collection for which approval has expired.

Title: Federal Credit Union Charter Application, Community Charter Conversion/Expansion Application, and Field of Membership Amendments.

Description: The Federal Credit Union (FCU) Act and Credit Union Membership Access (CUMA) Act set forth the requirements for establishing a credit union based on a type of field of membership. The data collection is necessary to determine that the application for the new charter/amendment is in compliance with the FCU and CUMA Acts.

Respondents: Individuals or groups wishing to charter a credit union and credit unions wishing to expand their field of membership or convert their current type of field of membership to another.

Estimated No. of Respondents/Recordkeepers: 9,080.

Estimated Burden Hours Per Response: 2.75 hours.

Frequency of Response: On occasion as required.

Estimated Total Annual Burden Hours: 24,400.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on December 21, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–34520 Filed 12–29–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and Request for Comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for 3 years.

DATES: Written comments on this notice must be received by March 1, 1999 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 306–1125 x 2017; or send e-mail to splimpto@nsf.gov. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Survey of Research and Development Expenditures at Universities and Colleges, FY 1999 through FY 2001; OMB Control Number 3145–0100.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Renewal Project: Separately budgeted current fund expenditures on research and development in the sciences and engineering performed by universities and colleges and their affiliated federally funded research and development centers—A mail/electronic survey, the Survey of Scientific and Engineering Expenditures at Universities and Colleges, originated in fiscal year (FY) 1954 and has been conducted annually since FY 1972. The survey is the academic expenditure component of the NSF statistical program that seeks to provide a ''central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government,'' as mandated in the National Science Foundation Act of 1950.

Use of the Information: The proposed project will return to and maintain a full survey cycle population of about 700 institutions.

The survey which was conducted as a full survey population only every 5 years and as a statistical sample in each of the 4 intervening years was based primarily on reducing respondent burden. Consistency of records of the non-sampled institutions and frequent personnel changes, added to their burden. With the onset of Web-based data collection and a change for a minimum requirement of $150K in expenditures for any master's or bachelor's degree-granting institution, the respondent burden and timleness is expected to decrease. These institutions account for over 98 percent of the Nation's academic R&D funds. The survey has provided continuity of statistics on R&D expenditures by source of funds and passed through dollars; by science & engineering (S&E) field, and separate data requested on current fund expenditures for research equipment by S&E field, and selected non-science & engineering fields. In addition, Statistics from the survey are published in NSF's annual publication series Academic Science and Engineering R&D Expenditures and are available electronically on the World Wide Web.

The survey will be mailed primarily to the administrators at the Institutional Research Offices. To minimize burden, institutions are provided with (in addition to paper copy) file specifications needed to upload data from the web data collection system (http://www.qrc.com/exp). Approximately 65% responded electronically using the previous Automatic Survey Questionnaire on diskette to this voluntary survey in FY 1997 and a total response rate of 98.0% was obtained. Burden estimates are as follows:

Fiscal year	Total number of institutions	Burden hours		
		Doctorate—granting	Masters—granting	Bachelors or below
1997	692	19.0	7.0	7.0
1996	692	21.5	7.1	6.2

Dated: December 23, 1998.

Suzanne H. Plimpton,

Reports Clearance Officer.

[FR Doc. 98–34393 Filed 12–29–98; 8:45 am]

BILLING CODE 7555–01–U

NATIONAL TRANSPORTATION SAFETY BOARD

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

The National Transportation Safety Board intends to submit the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the paperwork reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval is being requested concurrently with this submission. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the National Transportation Safety Board Departmental Clearance Officer, Larry Crabill (202) 314–6224. Comments and questions about the ICR listed below should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Transportation Safety Board, Office of Management and Budget, Room 10102,725 17th Street, N.W., Washington, D.C. 20503.

Agency: National Transportation Safety Board.

Title: Intrastate Truck Study Questionnaire.

OMB Number: New.

Frequency: Once.

Affected Public: Commercial Motor Carriers.

Number of Respondents: 3000.

Estimated time per respondent: 30 minutes.

Total Burden Hours: 1500.

Description: The National Transportation Safety Board is currently conducting a study examining intrastate motor carrier operations and their impact on transportation safety. Commercial motor carriers transport cargo billions of mile each year. Each trip is considered either intrastate or interstate commerce based on the destination of the cargo being transported. While interstate operations are subject to federal regulations, intrastate operations are subject to the laws and regulations of the State in which they occur. There is limited data available regarding intrastate trucking operations and the absence of such data makes it impossible to identify its impact on safety.

Therefore, the National Transportation Safety Board is seeking clearance to obtain data from motor carriers to evaluate the safety of intrastate operations.

Dated: December 21, 1998.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–34506 Filed 12–29–98; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Advisory Committee on Reactor Safeguards (ACRS).

SUMMARY: The Advisory Committee on Reactor Safeguards was established by Section 29 of the Atomic Energy Act (AEA) in 1954. Its purpose is to provide advice to the Commission with regard to the hazards of proposed or existing reactor facilities, to review each application for a construction permit or operating license for certain facilities specified in the AEA, and such other duties as the Commission may request. The AEA as amended by PL–100–456 also specifies that the Defense Nuclear Safety Board may obtain the advice and recommendations of the ACRS.

Membership on the Committee includes individuals experienced in reactor operations, management; probabilistic risk assessment; analysis of reactor accident phenomena; design of nuclear power plant structures, systems and components; and mechanical, civil, and electrical engineering.

The Nuclear Regulatory Commission has determined that renewal of the charter for the ACRS until December 23, 2000 is in the public interest in connection with the statutory responsibilities assigned to the ACRS. This action is being taken in accordance with the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Andrew L. Bates, Office of the Secretary, NRC, Washington, DC 20555; telephone: (301) 415–1963.

Dated: December 23, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–34569 Filed 12–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reliability and Probabilistic Risk Assessment; Revised

The ACRS Subcommittee meeting on Reliability and Probabilistic Risk Assessment scheduled for January 21, 1999 has been *rescheduled for Monday, January 25, 1999 at 1:00 p.m., in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.* The Subcommittee will discuss the possible use of frequency-consequence curves in risk-informed decisionmaking.

The Subcommittee will not review proposed options to make 10 CFR 50.59 risk-informed as was previously announced. All other items pertaining to this meeting remain the same as published in the **Federal Register** on Wednesday, December 23, 1998 (63 FR 71171).

For further information contact: Mr. Michael T. Markley, cognizant ACRS staff engineer (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST).

Date: December 23, 1998.

Michael T. Markley,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–34570 Filed 12–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 27–29, 1999, Executive Board Room, One Bethesda Metro Center, Bethesda, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, January 27, 1999—8:30 a.m. until the conclusion of business

Thursday, January 28, 1999—8:30 a.m. until the conclusion of business

Friday, January 29, 1999—8:30 a.m. until 12:00 Noon

The Subcommittee will discuss proposed ACRS activities and related matters, including: ACRS priorities for CY 1999; emerging technical issues; and ACRS report to the Commission on the NRC Safety Research Program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made. A detail agenda for this meeting is available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes to the schedule, etc., that may have occurred.

Dated: December 23, 1998.

Michael T. Markley,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–34571 Filed 12–29–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of December 28, 1998, January 4, 11, and 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 28

There are no meetings scheduled for the week of December 28, 1998.

Week of January 4—Tentative

Wednesday, January 6

11:30 a.m.
Affirmation Session (Public Meeting) (if needed).

Week of January 11—Tentative

Monday, January 11

2:00 p.m.
Briefing on Risk-Informed Initiatives (Public Meeting).

Tuesday, January 12

9:00 a.m.
Briefing on Decommissioning Criteria for West Valley (Public Meeting).

Wednesday, January 13

10:00 a.m.
Briefing on Reactor Licensing Initiatives (Public Meeting).
11:30 a.m.
Affirmation Session (Public Meeting) (If Needed).

Friday, January 15

9:00 a.m.
Briefing on Investigative Matters (Closed—Ex. 5 & 7).
10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1).

Week of January 18—Tentative

Tuesday, January 19

2:00 p.m.
Briefing on Status of Third Party Oversight of Millstone Station's Employee Concerns Program and Safety Conscious Work Environment (Public Meeting).

Wednesday, January 20

9:30 a.m.
Briefing on Reactor Inspection, Enforcement And Assessment (Public Meeting).
11:00 a.m.
Affirmation Session (Public Meeting) (If Needed).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–145–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: December 24, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–34679 Filed 12–28–98; 12:01 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 7, 1998, through December 17, 1998. The last biweekly notice was published on December 16, 1998 (63 FR 69332).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or

different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 29, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: October 27, 1998.

Description of amendment request: The Carolina Power & Light Company, licensee for the Brunswick Steam Electric Plant (BSEP), Unit Nos. 1 and 2, proposed amendments to the Operating Licenses for the BSEP units. The amendments are administrative in nature and would delete various completed license conditions, make editorial changes, and provide clarifying information.

The licensee has concluded that the proposed license amendments do not involve a Significant Hazards Consideration. In support of this determination, an evaluation of each of the three standards set forth in 10 CFR 50.92 is provided below.

Basis for a proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise the BSEP, Unit Nos. 1 and 2, Facility Operating Licenses to delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative and only provide updated and clarifying information. No physical or operational changes to the facility will result from the proposed changes. Therefore, the proposed license amendments do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes revise the BSEP, Unit Nos. 1 and 2, Facility Operating Licenses to delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative and only provide updated and clarifying information. The proposed license amendments do not alter any plant operation and will not result in a physical change to the facility. Therefore, the proposed license amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The proposed changes revise the BSEP, Unit Nos. 1 and 2, Facility Operating Licenses to delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative and only provide updated and clarifying information. No physical or operational changes to the facility will result from the proposed changes. Therefore, the proposed license amendments do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Frederick J. Hebdon.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: November 30, 1998.

Description of amendment request: This amendment request proposes to relocate, to a licensee controlled document, the requirement for removal of the Reactor Protection System (RPS) shorting links. Removal of the shorting links enables a non-coincident scram on high neutron flux as detected by the Source Range Monitors (SRMs).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The RPS shorting links are not precursors to any previously evaluated accident. The Source Range Monitors (SRMs), and the ability of the SRMs to provide a RPS trip, are also not precursors to any previously evaluated accident. Therefore, relocating the RPS shorting link requirement to administrative controls [the Updated Final Safety Analysis Report (UFSAR)] will not increase the probability of an accident previously evaluated.

The RPS shorting links are not assumed to be removed in any accident analysis, and the SRMs are not assumed to provide a RPS trip in any accident analysis. The refueling interlocks and SHUTDOWN MARGIN calculations will continue to provide assurance of reactivity control. Therefore, relocating the RPS shorting link requirements to administrative controls [the UFSAR] will not increase the consequences of an accident previously evaluated.

The RPS shorting link requirements will be relocated to administrative controls that are administered pursuant to the requirements of 10 CFR 50.59, thereby reducing the level of regulatory control. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated.

Consequently, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Relocating the RPS shorting link requirements to administrative controls [the UFSAR] does not create any new failure mechanisms. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The refuel interlocks and SHUTDOWN MARGIN calculations will continue to ensure that the reactor stays

subcritical in the Refuel Mode. The margin to safety as represented by the SHUTDOWN MARGIN designed into the core and verified in the SHUTDOWN MARGIN calculations will be unaffected by relocation of the RPS shorting link requirements to administrative controls [the UFSAR]. The margin to safety as represented by the fuel bundle drop assumptions protected by the refuel interlocks will be unaffected. In addition, no accident analysis assumes that the RPS shorting links are removed. In addition, the RPS shorting link requirements will be relocated to administrative controls [the UFSAR] for which future change will be evaluated pursuant to the requirements of 10 CFR 50.59. Therefore, there will be no change in the types or significant increase in the amounts of any effluents released offsite, and, thus, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Florida Power Corporation, et al. (FPC), Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: October 30, 1998 (LAR–236).

Description of amendment request: The proposed amendment would change the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) Section 5.6.2.19, Section 3.4.11, Bases 3.4.11 and Bases 3.4.3. The changes reflect the use of fluence methodology described in Topical Report BAW–2241P, ''Fluence and Uncertainty Methodologies,'' and the use of American Society of Mechanical Engineers (ASME) Code Case N–514, ''Low Temperature Overpressure Protection,'' for developing Low Temperature Overpressure Protection (LTOP) limits. Reference to Topical Report BAW–1543A, ''Integrated Reactor Vessel Surveillance Program,'' was also added to ITS Section 5.6.2.19. ITS Section 3.4.11 (Low Temperature Overpressure Protection System), was revised to reflect the new LTOP limits based on revised fluence projections through 32 Effective Full Power Years (EFPY). The Pressure/Temperature (P/T) Limits Report is being revised to reflect the new P/T limits for heatup, cooldown, hydrostatic and leak test, and to incorporate the CR–3 LTOP curve.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

LAR [License Amendment Request] #236 proposes several changes to the ITS operational limits. These changes are being proposed to maintain the necessary margins of safety through 32 EFPY using analyses based on methodologies that have been previously approved for use at CR–3, ASME Code Case N–514 and LTOP SER [Safety Evaluation Report], and are currently being reviewed by the NRC staff:

—NRC to FPC letter, 3N1293–30, dated December 20, 1993, ''Crystal River Unit 3—Issuance of Amendment RE: Improved Technical Specifications (TAC No. M74563)''

—NRC to FPC letter, 3N1297–16, dated December 22, 1997, ''Crystal River Unit 3—Staff Evaluation and Issuance of Amendment RE: Low-Temperature Overpressure Protection (TAC No. M99277)''

—NRC to FPC letter, 3N079705, dated July 3, 1997, ''Crystal River 3—Exemption from Requirements of 10 CFR 50.60, Acceptance Criteria for Fracture Prevention for Lightwater Nuclear Power Reactors for Normal Operation (TAC No. M98380)''

—BAW–2241P, ''Fluence and Uncertainty Methodologies''

The limiting transient for LTOP remains a failed-open makeup valve. Existing LTOP controls (maximum of one makeup pump capable of injecting into the RCS [reactor coolant system], high pressure injection (HPI) deactivated, the CFTs [core flood tanks] isolated, pressure relief capability and maintaining a gas volume in the RCS) remain unchanged from the current ITS 3.4.11 as approved by Reference 3, except the setpoints proposed herein. The setpoints are being updated to reflect the new 32 EFPY fluence analysis and P/T limits. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated since they do not introduce new systems, failure modes or plant perturbations. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not involve a significant reduction in the margin of safety since the proposed P/T limitations have been developed consistent with the requirements of 10 CFR 50.60. The operational limits have been developed to maintain the necessary margins of safety as defined by ASME through 32 EFPY using methodologies previously reviewed and approved by the NRC. The objective of these limits is to prevent non-ductile failure during any normal operating condition, including anticipated operational occurrences and system hydrostatic tests.

The LTOP safety factors are based on reanalyzed conditions for 32 EFPY of operation utilizing methodology contained in ASME Code Case N–514 which has been approved for use at CR–3. The Code Case provides an acceptable margin of safety against flaw initiation and reactor vessel failure. The application of Code Case N–514 for CR–3 ensures an acceptable level of safety. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14024, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: October 30, 1998.

Description of amendment request: The proposed amendment requests approval of a change to the Crystal River Unit 3 (CR–3) Final Safety Analysis Report (FSAR) regarding the methodology for performing the Spent Fuel Pool (SFP) B criticality analysis. Recent Boraflex samples from the SFP B demonstrate a weight loss in excess of the available margin within the current licensing basis calculation. The criticality analysis calculations proposed in this amendment request demonstrate that the burnup/enrichment curves in the current Improved Technical Specifications (ITS) have sufficient margin to accommodate up to a 20% loss in Boraflex neutron absorption, and still maintain SFP B at less than or equal to 0.95 k-effective when fully loaded and flooded with unborated water. Florida Power Corporation has concluded that the change in the criticality analysis methodology represents an unreviewed safety question, and thus requires prior NRC approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The two possible accidents are: (1) criticality during normal storage and (2) criticality due to a misloaded fuel assembly during handling fuel. Each are discussed below:

(1) Criticality during normal storage.

For criticality during normal storage to occur, there must be a loss of negative reactivity since an addition of positive reactivity is not possible without fuel movement. A loss in negative reactivity could result only from reduction in Boraflex inventory below that needed to meet the design basis. The proposed criticality analysis for Spent Fuel Pool B demonstrates that Spent Fuel Pool B is capable of maintaining the design basis requirement of k-effective less than or equal to 0.95 when flooded with unborated water and with a loss of up to 20% of the Boraflex absorber material. Therefore, allowing up to 20% Boraflex loss with the new analysis does not significantly increase the probability of an accident previously evaluated.

(2) Criticality during fuel handling.

Criticality during fuel handling could occur due to loss of negative reactivity, or the addition of positive reactivity. Loss of negative reactivity could result from loss of Boraflex as discussed above.

Addition of positive reactivity would result from the misloading of fuel in a fashion not in accordance with ITS LCO 3.7.15, such as the misloading of a fresh 5.05% enriched fuel assembly into Region 2 or side-by-side with another fresh fuel assembly in Region 1. The minimum required boron concentration of ITS LCO 3.7.14 and CR–3 FSAR 9.3.2.1.2 are intended to compensate for just such an accident. Consistent with the double-contingency principle, a boron dilution is not required to be considered concurrent with a misloaded new fuel assembly (bases of ITS LCO 3.7.14). The use of a new calculational method will not increase the probability of fuel assembly misloading. A boron dilution event without an accompanying misloaded fuel assembly is not impacted by the new criticality analysis, since the design basis allows for unborated water for normal storage conditions.

Therefore, since the proposed criticality analysis does not increase the probability of a misloaded fuel assembly, the probability of an occurrence of an accident previously evaluated is not significantly increased.

Boraflex is credited with preventing inadvertent criticality. It is not credited with mitigating the effects, or dose consequences, to the public or to plant personnel from an inadvertent criticality. The criticality analysis does not affect or mitigate the dose consequences to the public or plant personnel from an inadvertent criticality.

There are no other SAR accidents that could be affected. Therefore, the use of the proposed criticality analysis, does not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The only purpose, or function, of Boraflex is reactivity control. Therefore, the use of the proposed criticality analysis can only result in reactivity related accidents, such as an inadvertent criticality. Though a spent fuel pool criticality accident is not discussed in detail, a calculation to ensure such an accident could not occur is referenced by both FSAR 9.3 and 9.6. Therefore, this is an accident already discussed by the SAR and dependence on a new criticality analysis does not create the possibility of an accident of a new or different kind than any previously evaluated.

3. Involve a significant reduction in a margin of safety.

No. The proposed analysis demonstrates that the safety function and design basis are met even for a Boraflex loss of up to 20%. Though the proposed criticality analysis methodology is more realistic, and has been licensed at other sites, it is less conservative than the existing, NRC approved analysis that is currently part of the CR–3 licensing basis. Additionally, it permits operation with a greater loss of Boraflex than the existing analysis.

The current licensing basis, BAW–2209, ''Crystal River Unit 3 Spent Fuel Storage Pool Criticality Analysis'', provides the analytical basis of both ITS LCO 3.7.14 and LCO 3.7.15. This analysis uses very conservative assumptions and methodologies, and results in very little margin remaining for identified Boraflex loss. The margin of safety, although less than previously evaluated, is not significantly reduced with reliance on the current criticality analysis. The margin of safety is restored with use of the proposed criticality analysis. Therefore, the margin of safety is not significantly reduced with use of the proposed criticality analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: November 23, 1998.

Description of amendment request: The proposed amendment would change the CR–3 Improved Technical Specifications (ITS) to raise the Engineered Safeguards Actuation System (ESAS) setpoint for reactor coolant system (RCS) low pressure from

1500 psig to 1625 psig. This change is intended to provide for earlier actuation of high pressure injection (HPI) following certain small break loss of coolant accidents and result in a lower peak center line temperature (PCT) during these transients. The applicability requirement for ESAS operability would be changed from greater than 1700 psig to greater than 1800 psig to maintain the previous margin above the ESAS setpoint. Similarly, the reactor protection system (RPS) setpoint for RCS low pressure and the RPS setpoint for Shutdown Bypass (RCS High Pressure) would each be raised by 100 psig to maintain the previous pressure margins. In addition, Surveillance Requirement 3.5.2.5 would be revised such that valves in the HPI flowpath that are throttled to balance flow between the four HPI lines would be verified in the correct position. The need for these changes resulted from planned modifications to the HPI system to improve performance and reliability of this system. Changes to ITS Bases necessitated by the system modifications and setpoint changes are included in the submittal.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The setpoint changes for reactor trip and High Pressure Injection (HPI) actuation will result in a very small (approximately one-percent) increase in the probability for reactor trips. Review of industry data shows that this increase is not significant. The revised accident analysis has determined that transients which reduce Reactor Coolant System (RCS) pressure below the new setpoints, warrant the associated action. Engineered Safeguards Actuation System (ESAS) and Reactor Protection System (RPS) actuations are used to mitigate accidents and are not the initiator of analyzed accidents. Therefore, the probability of previously evaluated accidents is not affected.

RPS and ESAS functions are assumed to actuate to mitigate transients. The revised setpoints will ensure earlier actuation of the RPS and ESAS on a low RCS pressure condition. Raising the ESAS Low RCS Pressure Setpoint will ensure earlier automatic HPI actuation for a portion of the spectrum of pressure decreasing events. For rapid depressurization events, such as main steam line break and large break Loss of Coolant Accident (LOCA), this will have little impact. For slower events, or those that do not reach the current setpoint during the initial subcooled blowdown phase, HPI will be automatically initiated substantially earlier in the event. This will increase the integrated HPI flow to the RCS during the time the core is likely to be uncovered, thereby reducing the consequential PCT. This additional flow results in a significant peak clad temperature (PCT) decrease for small break LOCA scenarios less than 0.07 square feet. Based on the above, the consequences of previously evaluated accidents will not be increased.

The HPI system characteristics will not be affected such that the probability of any accident is increased. The system flow restriction for protection from low temperature overpressure (LTOP) events will be maintained. The HPI system is used for accident mitigation and is not the initiator of evaluated accidents other than LTOP. The proposed surveillance changes will ensure that all valves throttled in the HPI flowpath are verified and secured in the correct position. The throttle valves and stop check valves will be positioned to ensure HPI flow is within analyzed limits. Therefore, the consequences of accidents that rely on HPI flow will not be increased.

Based on the above evaluation, the probability or consequences of evaluated accidents are not significantly increased by these changes.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to RPS and ESAS setpoints will not change the functions of plant equipment, no new system interactions will be created, and no new failure modes will be introduced. The setpoint changes will permit earlier actuation for the associated actions. However, no new plant conditions will be introduced by the setpoint changes.

The HPI modifications include the installation of throttle valves that will change the flow characteristics of the system. The new throttle valves are manual valves that will be secured in position. The revised surveillance requirements will ensure these valves are positioned such that HPI flow is within analyzed limits. Therefore, no conditions are created that could cause a new type of accident.

Based on the above evaluation, these changes cannot create the possibility of an accident of a different type than previously evaluated in the [Safety Analysis Report] SAR.

3. Does not involve a significant reduction in the margin of safety.

The safety function of the affected portions of the RPS and ESAS systems is to actuate their respective functions if RCS pressure drops below the setpoint. The raised RPS and ESAS setpoints will provide earlier actuation for these protective features. These changes will increase the margin of safety provided by the associated Technical Specifications.

The safety function of the HPI system is to provide cooling to limit fuel peak clad temperature. The revised surveillance requirements will ensure valves are positioned such that HPI flow is within analyzed limits. Therefore, the margin of safety provided by the HPI surveillance requirements is maintained.

Based on the above evaluation, there is no reduction in the margin of safety associated with the equipment and systems affected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: December 3, 1998.

Description of amendment request: The proposed change revises the TMI–1 Core Protection Safety Limits and Core Protection Safety Bases, as specified in Technical Specification Figures 2.1–1 and 2.1–3, to provide more restrictive limits which reflect the decrease in reactor coolant system flow resulting from the analysis of increased once-through steam generator (OTSG) tube plugging limits (total allowable number of tubes plugged). The licensee is currently restricted to a total of 2,000 tubes plugged in both OTSGs which corresponds to 6.4 percent of the total number of tubes. The licensee's more restrictive Core Protection Safety Limits reflect the reduction in reactor coolant

flow that would exist if an average of 20 percent of the OTSG tubes were plugged.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. An increase in the average steam generator tube plugging (SGTP) level to 20% results in a small reduction of reactor coolant system (RCS) flow rates and primary to secondary heat transfer. These changes result in small changes to the primary and secondary side operating parameters, and do not result in any additional challenges to plant equipment. The proposed Technical Specification Changes resulting from the increase in allowable tube plugging limits are more restrictive but remain bounded by the existing reactor protection system (RPS) trip setpoints. The assessment of the NSSS [nuclear steam supply system] primary components, including the reactor pressure vessel, reactor core, reactor coolant pump, steam generator, pressurizer, control rod drive mechanisms, and RCS piping concluded that the integrity of these components will be unaffected by the increase in average SGTP level.

A re-analysis of the bounding Updated Final Safety Analysis Report (UFSAR) Chapter 14 accidents, specifically the startup accident, loss of coolant flow, loss of feedwater, and large and small break LOCA demonstrated compliance with the acceptance criteria. The RCS pressure boundary is not challenged, and the DNBR [departure from nucleate boiling ratio] and peak clad temperature values remain within the specified limits of the licensing basis. An analysis of the loss of electric power accident demonstrated the ability of the plant to transition smoothly to natural circulation with an average of 20% SGTP or with asymmetric plugging. It was also determined that the current mass and energy release data used for the containment integrity and equipment qualification remain bounding. Since the design requirements and safety limits continue to be met, system functions are not adversely impacted, and the integrity of the RCS pressure boundary is not challenged, the radiological consequences remain unchanged. Therefore, this activity does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed Technical Specification changes are more restrictive core protection safety limits but remain bounded by the existing RPS trip setpoints. This proposed change assures safe operation commensurate with the effects of steam generator tube plugging. This increase in the average level of SGTP to 20% will not introduce any new accident initiator mechanisms. No new failure modes or limiting single failures have been identified. Since the safety and design requirements continue to be met and the integrity of the RCS pressure boundary is not challenged, no new accident scenarios have been created. This change does not add any new equipment, modify any interfaces with existing equipment, or change the equipment function or the method of operating the equipment. Reactor core, RCS, and steam generator parameters remain within appropriate design limits during normal operation. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The existing RPS trip setpoints bound the proposed Technical Specification changes resulting from 20% SGTP. This change assures safe operation commensurate with the effects of steam generator tube plugging. The TMI–1 DNB design basis, RCS pressure limits, peak clad temperature limits and dose criteria are maintained for all UFSAR transients. Therefore, this activity does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania (REGIONAL DEPOSITORY), Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: November 16, 1998.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) related to the implementation of systems for the detection and suppression of coupled neutronic/thermal-hydraulic instabilities in the reactor. Average Power Range Monitor (APRM) flow control trip reference cards will initiate a reactor scram to limit the oscillation magnitude at reactor trip so as to limit the associated Critical Power Ratio change and, in conjunction with Minimum Critical Power Ratio (MCPR) operating limits, assure compliance with the MCPR safety limit. In addition, the changes would increase the APRM flow biased neutron flux scram and control rod block settings to allow plant operation in the Extended Load Line Limit Analysis region. Thus, the proposed changes are in regard to setpoints and calculations for fuel cladding integrity and the associated TS Bases. In the Bases for TS 2.1.1, the proposed change would reference new equations in TS 2.1.2a. In TS 2.1.2a, the proposed change would be to the equation for determining the flow biased APRM scram and rod block trip setpoints. In the Bases for TS 2.1.2a, the proposed change would reflect the new setpoints. In the Bases for TS 2.2.2, the proposed change would be to the description of the setpoint methodology which is based upon General Electric Report NEDC–31336, ''GE Instrumentation Setpoint Methodology.'' In Note (m) of TS Table 3.6.2/4.6.2, the proposed change would be to the calibration range for the APRM channel setpoint. In the Bases for TS 3.6.2/4.6.2, the proposed change would be to the equations and methodology for determining APRM scram and rod block setpoints. In TS 6.9.1.f, which identifies documents approved by NRC for analytical methods used to determine core operating limits, the proposed change would add ''NEDO–32465–A, Reactor Stability Detect and Suppress Solutions Licensing Basis Methodology for Reload Applications, August 1996.''

Basis for proposed no significant hazards consideration determination:

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The APRM neutron monitoring system is not an initiator or a precursor to an accident. The neutron monitoring system monitors the power level of the reactor core and provides automatic core protection signals in the event of a power transient. A Restricted Region will be maintained such that the probability of a stability event is not increased. Therefore, the proposed TS changes cannot affect the probability of a previously evaluated accident.

The proposed TS changes will revise the APRM flow-biased neutron flux scram TS setting to provide automatic protection to assure that anticipated coupled neutronic/thermal-hydraulic instabilities will not compromise established fuel safety limits. The proposed changes will result in a more restrictive APRM flow-biased scram trip setting in the low flow regions of the power/flow operating map (i.e., operational conditions where reactor instabilities are most probable). In other words, the new settings will provide a scram sooner (at a lower power level) than the existing settings. The associated control rod block setting will also be revised. A margin between the control rod block and flux scram has been determined by calculation.

The proposed changes will also revise the APRM flow-biased neutron flux scram and control rod block TS settings to provide an increase above the current values in operating conditions not susceptible to reactor instabilities. Specifically, the proposed changes will implement a 2% increase in the analytical limit of the APRM flow-biased flux scram and a 7% increase in the analytical limit of the APRM flow-biased control rod block. Evaluation demonstrates that these proposed analytical limit increases have negligible impact on the transient events results for NMP1 [Nine Mile Point Unit 1] as documented in Chapter XV of the NMP1 UFSAR, [Updated Final Safety Analysis Report], including the limiting transient events which are reanalyzed each reload. Of the twenty-five (25) transient events analyzed in Section XV of the NMP1 UFSAR, only the Inadvertent Startup of Cold Recirculation Loop event and the Recirculation Flow Controller Malfunction—Increase Flow event have potentially impacted results. The Chapter XV Control Rod Drop Accident as well as the Turbine Trip with No Bypass at Partial Power event were also evaluated.

For the Inadvertent Startup of Cold Recirculation Loop event, the proposed 2% increase in the high neutron flux scram would result in an increase in the fuel average surface heat flux response. However, there is significant margin between the surface heat flux value for this event and the current limiting MCPR [Minimum Critical Power Ratio] event (the Feedwater Controller Failure Maximum Demand event). As such, any small change to the fuel surface heat flux response due to the high neutron flux scram analytical limit increase would not result in the fuel thermal margin requirements for the Inadvertent Startup of Cold Recirculation Loop event to exceed the MCPR limits set by the limiting reload analysis event.

The reactor neutron flux for the Recirculation Flow Controller Malfunction—Increase Flow event also showed an increasing trend from its initial value. However, the peak response for this parameter (104% of rated) is significantly below the high neutron flux scram analytical limit. Accordingly, the proposed increase to the high neutron flux scram analytical limit does not affect the response to this transient event.

The Control Rod Drop Accident is included in Chapter XV of the NMP1 UFSAR. As noted in NEDE–24011–P–A, ''GESTAR II: General Electric Standard Application for Reactor Fuel,'' the initial power burst from this event is terminated by the Doppler reactivity feedback while the scram provides the final event termination several seconds later. The 120% APRM scram limit was conservatively chosen. The time delay introduced by the small change in analytical limit will be inconsequential due to the extremely rapid power rise for this event (i.e., the time of scram for a 120% analytical limit vs. a 122% analytical limit is essentially the same).

The proposed Bases changes to TS 3.6.2/4.6.2 and TS 2.2.2 simply provide details of the setpoint methodology currently used as well as specific allowable values.

Therefore, the proposed TS changes to implement a more restrictive flow-biased scram setting to protect against reactor instabilities and the proposed change to increase the high neutron flux scram and rod block analytical limits do not result in a significant increase in the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will revise the APRM flow-biased neutron flux scram TS settings to assure anticipated coupled neutronic/thermal-hydraulic instabilities will not compromise established fuel safety limits in the low flow regions of the power/flow operating map as well as revise the associated control rod block settings. These changes also propose a 2% increase in the analytical limit of the APRM flow-biased neutron flux scram and a 7% increase in the analytical limit of the APRM flow-biased control rod block. These changes do not introduce any new accident precursors and do not involve any alterations to plant configurations which could initiate a new or different kind of accident. The proposed changes do not affect the intended function of the APRM system nor do they affect the operation of the system in a way which would create a new or different kind of accident.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

More conservative APRM flow-biased neutron flux scram and control rod block settings will be implemented in the low flow regions of the power/flow operating map. The scram setting change will assure that anticipated coupled neutronic/thermal-hydraulic instabilities will not compromise established fuel safety limits. The proposed changes will also implement a 2% increase in the APRM flow-biased neutron flux scram and a 7% increase in the APRM flow-biased control rod block in those operating regions not susceptible to reactor instabilities. Evaluation demonstrates that these proposed increases have negligible impact on the transient events or accident results for NMP1. The impacted transient events are either not the limiting MCPR event, the peak response to the event is significantly below the high neutron flux scram analytical limit or in the case of the Control Rod Drop Accident, the time delay introduced by the change will be inconsequential due to the extremely rapid power rise. No other events are adversely affected. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2 (NMP2), Oswego County, New York

Date of amendment request: November 19, 1998.

Description of amendment request: The proposed amendment would change the surveillance frequencies in Technical Specifications (TSs) 4.8.4.4a, ''Surveillance Requirements—Reactor Protection System Electric Power Monitoring (RPS Logic),'' and 4.8.4.5a, ''Surveillance Requirements—Reactor Protection System Electric Power Monitoring (Scram Solenoids),'' to require channel functional testing of the RPS Motor Generator Set (M/G) and RPS Uninterruptible Power Supplies (UPS) Electrical Protection Assemblies (EPAs) at least once every 6 months. These TSs currently require that channel functional testing be performed each time the plant is in cold shutdown for a period of more than 24 hours, unless performed within the previous 6 months.

Basis for proposed no significant hazards consideration determination: During the last refueling outage, the licensee modified the Nine Mile Point Unit No. 2 (NMP2) design for the RPS M/G and RPS UPS EPAs to provide relay actuated protection systems. The relays of the new design may be individually isolated from an essential power circuit for testing and may be actuated without tripping the associated breaker. The relay actuated system will allow the EPA system monitoring an essential power supply to be functionally tested with the plant on-line. The EPA relay actuation setpoints are not affected by the modification or the proposed TS changes. The licensee states that the design, installation, and testing of the new units meet the criteria of the same standards that were applied to the previous units.

As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect surveillance testing frequency only. The new relay actuated protection system design functions in the same fail safe manner as the old units. Also, the new design in conjunction with the testing capability has increased EPA reliability, while introducing little risk to testing the EPAs with the plant in operation. Therefore, the proposed changes to the NMP2 TS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes affect surveillance testing frequency of relay actuated protection circuits only. The proposed changes do not introduce any new or different accident initiators from any that were previously evaluated. EPA relay actuation setpoints are not affected. The actual fail safe system conditions required for EPA actuation will remain the same. Therefore, the operation of NMP2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The function of the EPA systems is to isolate the loads from supply power. That function was not altered by the proposed change. Reliability of the EPA systems is improved. Therefore, the operation of NMP2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York

Date of amendment request: November 30, 1998.

Description of amendment request: The proposed amendment would correct Technical Specification (TS) 3.1.2, ''Liquid Poison System,'' and the associated TS Bases. Specifically, in the Bases for TS 3.1.2, the boron-10 concentration of 120 ppm (which is incorrectly calculated using atomic percent instead of weight percent) would be changed to 109.8 ppm. In TS 3.1.2, the minimum volume of the sodium pentaborate solution contained in the Liquid Poison System storage tank would be increased from 1185 gallons to 1325 gallons.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Liquid Poison System is designed to provide the capability to bring the reactor from a full design rating to a shutdown condition assuming none of the control rods can be inserted. The system is manually initiated in response to a failure of the Control Rod Drive System to shutdown the reactor. The proposed changes revise the required liquid poison solution volume and concentration. The proposed changes to the Technical Specifications and the Bases require no changes to the physical facility which could adversely affect any accident precursors. Therefore, the proposed changes cannot significantly increase the probability of an accident.

The proposed changes will assure that the Liquid Poison System continues to provide the capability to shutdown the reactor during an ATWS [Anticipated Transient Without Scram] event. In addition, the system will continue to be capable of bringing the reactor to cold shutdown, 3 percent delta k subcritical (0.97 k_{eff}), from a full design rating of

1850 megawatts thermal assuming none of the control rods can be inserted, and considering the combined effects of coolant voids, temperature change, fuel doppler, and xenon and samarium. Therefore, the change to the Technical Specifications does not significantly increase the consequences of a previously evaluated accident.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Injection of the sodium pentaborate solution into the reactor vessel has been considered in the plant design. The proposed changes revise the required liquid poison solution volume and concentration. The proposed changes make no physical modification to the plant which could create the possibility of a new or different kind of accident. The proposed changes will maintain the capability of the Liquid Poison System to shutdown the reactor from its full design rating assuming none of the control rods are inserted, and considering the combined effects of coolant voids, temperature change, fuel doppler, and xenon and samarium. Consequently, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes revise the required liquid poison solution volume and concentration. The proposed changes make no physical modification to the plant which could reduce the margin of safety. These changes will assure compliance with the requirements of 10CFR50.62, ''Requirements for Reduction of Risk from Anticipated Transients without Scram (ATWS) Events for Light-Water-Cooled Nuclear Power Plants.'' In addition, these changes will maintain the capability of the Liquid Poison System to bring the reactor from a full design rating of 1850 megawatts thermal to greater than 3 percent delta k subcritical (0.97 k_{eff}) assuming none of the control rods can be inserted, and considering the combined effects of coolant voids, temperature change, fuel doppler, xenon and samarium.

The required volume of boron-10 solution in the Liquid Poison System storage tank includes an additional 25 percent margin beyond the amount needed to shutdown the reactor to allow for any unexpected non-uniform mixing. Also, the total storage tank volume of sodium pentaborate solution incorporates 197 gallons of solution which is unavailable for injection into the reactor vessel and a 25 gallon margin for conservatism. Additionally, using one 30 gpm Liquid Poison System pump, the injection time is greater than 17 minutes thereby assuring adequate mixing. The proposed changes to the liquid poison concentration and volume ensure the NMP1 [Nine Mile Point Unit 1] Liquid Poison System is able to meet its safety function requirements. Therefore, this change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 4, 1998.

Description of amendment request: The proposed amendment would eliminate the need to cycle the plant and its components through a shutdown-startup cycle by allowing the next snubber surveillance interval to be deferred until the end of refueling outage 6 or September 10, 1999, whichever date is earlier.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change is for a one time extension to the surveillance interval of snubber inspections required by Technical Specification 4.7.10.e. The change involves revising the calendar time for snubber interval inspections to 36 months to coincide with the time frame of the current cycle 6 operation.

Snubber testing experience at Millstone Unit No. 3 has shown that historical failure rates of snubbers are low. During the third refueling outage, after an operating cycle of approximately 22 months, the functional testing program identified multiple Type A failures attributed primarily to original plant construction, and resulted in a full inspection of all Type A snubbers. The snubber inspection interval was extended to approximately 30 months by a one-time extension to the Technical Specifications for the fourth refueling outage and only one Type A snubber failure was identified. Subsequent outages with operating durations of 18 and 17 months also identified only a single Type B failure in each outage. The results of piping stress analysis which have been performed to assess the impact of snubbers which have failed to meet functional test acceptance criteria have shown that neither piping system functionality or structural integrity have ever been compromised.

During the recent cycle 6 operation Millstone 3 has experienced an extended midcycle shutdown, where temperature, vibration effects and normal wear on snubbers have been minimized as compared to a normal operating cycle. The last snubber surveillance interval inspections were completed during this midcycle shutdown. Although the calendar surveillance interval is impacted by this change the primary conditions that present challenges to snubbers have not been prevalent during the extended shutdown. Given the low failure rates of snubbers over the last 3 surveillance intervals, and the fact the operating time of the remainder of cycle 6 will be approximately 1 year, snubber failures are expected to be similar to previous intervals.

Accordingly the possibility of a snubber failure leading to a Decrease in Reactor Coolant Inventory or a Decrease in Heat Removal by the Secondary System is not increased and there is no affect on the probability of previously evaluated accidents.

This change does not include any physical changes to the plant and does not affect acceptance criteria or the

required actions for functional failures of snubbers. Accordingly there is no increase in the consequences of previously evaluated accidents resulting in a Decrease in Reactor Coolant Inventory or a Decrease in Heat Removal by the Secondary System.

Thus it is concluded that the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed revision to the surveillance interval does not change the operation of any plant system or component during normal or accident conditions. The proposed change extends the surveillance interval of snubber inspections required by Technical Specification 4.7.10.e. The change involves revising the calendar time for snubber interval inspections to coincide with the time frame of current cycle 6 operation. This change does not include any physical changes to the plant and does not affect acceptance criteria or the required actions for functional failures of snubbers.

Thus, this proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change extends the surveillance interval of snubber inspections required by Technical Specification 4.7.10.e. The change involves revising the calendar time for snubber interval inspections to coincide with the time frame of current cycle 6 operation. This change does not include any physical changes to the plant and does not affect acceptance criteria or the required actions for functional failures of snubbers. The service life of the snubbers or parts as required by Technical Specification 4.7.10.i will not be impacted by this change since the required replacements have already occurred and no additional service life dates will expire prior to September 10, 1999.

Thus, it is concluded that the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: November 24, 1998.

Description of amendment request: The proposed amendment would revise the Ginna Station Improved Technical Specifications description of the fuel cladding material (TS 4.2.1) and to update the list of references provided in Specification 5.6.5 for the Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Evaluation of Administrative Changes

The administrative changes [related to the update of references provided in Specification 5.6.5 for the Core Operating Limits report] do not involve a significant hazards consideration as discussed below:

1. Operation of Ginna Station in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes revise Administrative Controls Section 5.6.5.b to update the references to NRC approved documents which support the analysis for the Heat Flux Hot Channel Factor in the Core Operating Limits Report and to provide clarification to the currently applicable methodology. It revises the Design Features Section 4.2.1 to provide clarification of the types of zirconium alloy filler rod material that have received previous NRC approval and to clarify that the application shall be NRC approved. Section 4.2.1 is revised to clarify that the analyses performed to verify compliance with the fuel safety design bases shall be cycle specific. As such, these changes are administrative in nature and do not impact initiators or analyzed events or assumed mitigation of accident or transient events. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Operation of Ginna Station in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed administrative changes do not affect the manner by which the plant is operated and no new equipment will be installed. The proposed administrative changes will not impose any new or different requirements. All original design and performance criteria continue to be met, and no new failure modes have been created for any system, component, or piece of equipment. Thus, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna Station in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed changes will not reduce a margin of plant safety because the methodology has been shown to meet all applicable design criteria and ensure that all pertinent licensing basis acceptance criteria are met. As such, no question of safety is involved, and the changes do not involve a significant reduction in a margin of safety.

Evaluation of Less Restrictive Changes

The less restrictive change [related to the fuel cladding material (TS 4.2.1)] does not involve a significant hazards consideration as discussed below:

(1) Operation of Ginna Station in accordance with the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The Westinghouse 14×14 VANTAGE + fuel assemblies containing fuel rods fabricated with ZIRLO alloy meet the same fuel assembly and fuel rod design bases as Westinghouse 14×14 OFA [Optimized Fuel Assembly] fuel assemblies in the other fuel regions. In addition, the 10 CFR 50.46 criteria will be applied to the fuel rods fabricated with ZIRLO alloy. The use of these fuel assemblies will not result in a change to the proposed Ginna Westinghouse 14×14 OFA reload design and safety analysis limits. The ZIRLO alloy is similar in chemical composition and has similar physical and mechanical properties as that of Zircaloy-4. Thus the cladding integrity is maintained and the structural integrity of the fuel

assembly is not affected. The ZIRLO clad fuel rods improve corrosion resistance and dimensional stability. The use of ZIRLO does not impact the radiological consequences of accidents previously evaluated in the Safety Analysis. The RCS [reactor coolant system] isotopic inventory is negligibly impacted; therefore, changes in postulated releases from the RCS or the secondary systems are negligible. Assumptions of fuel melting in the radiological analyses are not based on the type of fuel cladding. For those accidents where fuel melting is postulated to occur (control rod ejection, locked [seized] RCP rotor), the amount of fuel undergoing melting and clad damage using ZIRLO clad is bounded by the current values used in the Safety Analysis. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Operation of Ginna Station in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The Westinghouse 14×14 VANTAGE + fuel assemblies containing fuel rods fabricated with ZIRLO alloy will satisfy the same design bases as that used for Westinghouse 14×14 OFA fuel assemblies in the other fuel regions. Since the original design criteria is being met, the fuel rods fabricated with ZIRLO alloy will not be an initiator for any new accident. All design and performance criteria will continue to be met and no new single failure mechanisms have been created. In addition, the use of these fuel assemblies does not involve any alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

(3) Operation of Ginna Station in accordance with the proposed change does not involve a significant reduction in a margin of safety. The Westinghouse 14×14 VANTAGE + fuel assemblies containing fuel rods fabricated with ZIRLO alloy do not change the proposed Ginna Westinghouse 14×14 OFA reload design and safety analysis limits. The use of these fuel assemblies containing fuel rods fabricated with ZIRLO alloy will take into consideration the normal core operating conditions allowed in the Technical Specifications. For each cycle reload core, these fuel assemblies will be specifically evaluated using approved reload design methods and approved fuel rod design models and methods as specified in Technical Specifications. This will include consideration of the core physics analysis peaking factors and core average linear heat rate effects. In addition, the 10 CFR 50.46 criteria will be applied each cycle to the fuel rods fabricated with ZIRLO alloy. Analyses or evaluations will be performed each cycle to confirm that 10 CFR 50.46 will be met. Therefore, the margin of safety as defined in the Bases to the Ginna Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: S. Singh Bajwa.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362,

San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 23, 1998.

Description of amendment requests: The proposed change would revise the Technical Specifications (TS) to (1) reinstate the log power reactor trip at or above 4E–5% RATED THERMAL POWER (RTP); (2) reinstate reactor trips for Reactor Coolant Flow—Low (RCS flow), the Local Power Density—High (LPD), and the Departure from Nucleate Boiling Ratio—Low (DNBR); (3) remove the word ''automatically'' from notes (a) and (d) of Table 3.3.1–1 to clarify that the manual enable of the trip is permissible; and, (4) clarify that the setpoints on Table 3.3.1–1 are set relative to logarithmic power, not thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS 3.3.1 does not adversely impact structure, system, or component design or operation in a manner which would result in a change in the frequency of occurrence of accident initiation. SCE has re-analyzed the relevant accidents and established that accident consequences are not significantly increased by the proposed changes to the bypass-permissive and enable setpoints. The reactor trip bypass and automatic enable functions are not accident initiators. Consequently, the proposed TS change will not significantly increase the probability of accidents previously evaluated. Therefore, this amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different accidents result from changing the reactor trip bypass-permissive and automatic enable setpoints. Introducing an uncertainty band for the enable setpoints delays the mitigation action of the reactor trip for the design basis analysis for the events that credit this trip. The enable setpoint itself does not cause any accident. Therefore, the amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

SCE [Southern California Edison Company] has re-analyzed the accidents and determined that the consequences of the accidents are within their acceptance criteria under the proposed amendment so that the margin of safety that bounds the setpoint in both directions remains intact. The analyses are relatively insensitive to the reactor trip automatic enable setpoints, and no significant reduction in the margins of safety ensues from the relatively minor proposed changes to the bypass-permissive and enable setpoints, nor from establishing allowable values for these points.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 23, 1998.

Description of amendment request: The proposed amendment relocates descriptive design information from Technical Specification 3/4.7.1.1 (Table 3.7–2), regarding orifice sizes for main steam line Code safety valves, to the Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates the orifice size design information for the main steam line Code safety valves, found in Table 3.7–2, that does not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The affected descriptive design information is not related to any assumed initiators of analyzed events and is not assumed to mitigate accident or transient events. The limiting condition for operation for the main steam line Code safety valves is not altered by the proposed change. The orifice size design information will be relocated from Table 3.7–2 of Specification 3/4.7.1.1 to the Bases section for that same Technical Specification and will be maintained pursuant to 10 CFR 50.59. In addition, surveillance testing details for this Technical Specification are addressed in existing surveillance procedures, which are also controlled by 10 CFR 50.59, and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relocates the orifice size design information for the main steam line Code safety valves, found in Table 3.7–2, that does not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change relocates the orifice size design information for the main steam line Code safety valves, found in Table 3.7–2, that does not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the relocated orifice size design information remains the same as the existing Technical Specifications. Since any future changes to this orifice size information (that will be located in the Bases section) will be evaluated per the requirements of 10 CFR 50.59, there is no reduction in a margin of safety.

The proposed change is also consistent with the Westinghouse Plants (Improved) Standard Technical Specification, NUREG–1431, approved by the NRC Staff. Revising the Technical Specification to reflect the approved content of NUREG–1431 ensures no significant reduction in the margin of safety. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: November 11, 1998.

Brief description of amendments: The proposed amendments revise core safety limit curves and Overtemperature N–16 reactor trip setpoints based on analyses of the core configuration and expected operation for Comanche Peak Steam Electric Station (CPSES) Unit 2, Cycle 5. The changes apply equally to CPSES Units 1 and 2 licenses since the Technical Specifications are combined.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

A. Revision to the Unit 2 Core Safety Limits

Analyses of reactor core safety limits are required as part of reload calculations for each cycle. TU Electric has performed the analyses of the Unit 2, Cycle 5 core configuration to determine the reactor core safety limits. The methodologies and safety analysis values result in new operating curves which, in general, permit plant operation over a similar range of acceptable conditions. This change means that if a transient were to occur with the plant operating at the limits of the new curve, a different temperature and power level might be attained than if the plant were operating within the bounds of the old curves. However, since the new curves were developed using NRC approved methodologies which are wholly consistent with and do not represent a change in the Technical Specification BASES for safety limits, all applicable postulated transients will continue to be properly mitigated. As a result, there will be no significant increase in the consequences, as determined by accident analyses, of any accident previously evaluated.

B. Revision to Unit 2 Overtemperature N–16 Reactor Trip Setpoints

As a result of changes discussed, the Overtemperature reactor trip setpoint has been recalculated. These trip setpoints help ensure that the core safety limits are protected and that all applicable limits of the safety analysis are met.

Based on the calculations performed, no significant changes to the safety

analysis values for Overtemperature reactor trip setpoint were required. The f(delta I) trip reset function was revised due to less top-skewed axial power distributions predicted for this cycle. The analyses performed show that, using the TU Electric methodologies, all applicable limits of the safety analysis are met. This setpoint provides a trip function which allows the mitigation of postulated accidents and has no impact on accident initiation. Therefore, the changes in safety analysis values do not involve an increase in the probability of an accident and, based on satisfying all applicable safety analysis limits, there is no significant increase in the consequences of any accident previously evaluated.

In addition, sufficient operating margin has been maintained in the overtemperature setpoint such that the risk of turbine runbacks or unnecessary reactor trips due to upper plenum flow anomalies or other operational transients will be minimized, thereby, reducing potential challenges to the plant safety systems.

C. Administrative changes to reflect plant nomenclature

Changes to the N–16 trip setpoint equation are for clarification only to more accurately reflect CPSES plant nomenclature. This change is administrative in nature and does not increase in the probability or consequences of an accident previously evaluated.

Summary

The changes in the amendment request apply NRC approved methodologies to changes in safety analysis values, new core safety limits and new N–16 setpoint and parameter values to assure that all applicable safety analysis limits have been met. The potential for an operational transient to occur has not been affected and there has been no significant impact on the consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve the calculation of new reactor core safety limits and overtemperature reactor trip setpoint resets. As such, the changes play an important role in the analysis of postulated accidents but none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Changes to the N–16 trip setpoint equation are for clarification only to more accurately reflect CPSES plant nomenclature. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

In reviewing and approving the methods used for safety analyses and calculations, the NRC has approved the safety analysis limits which establish the margin of safety to be maintained. While the actual impact on safety is discussed in response to question 1, the impact on margin of safety is discussed below:

A. Revision to the Unit 2 Reactor Core Safety Limits

The NRC-approved TU Electric reload analysis methods have been used to determine new reactor core safety limits. All applicable safety analysis limits have been met. The methods used are wholly consistent with Technical Specification BASES 2.1 which is the bases for the safety limits. In particular, the curves assure that for Unit 2, Cycle 5, the calculated DNBR is no less than the safety analysis limit and the average enthalpy at the vessel exit is less than the enthalpy of saturated liquid. The acceptance criteria remains valid and continues to be satisfied; therefore, no change in a margin of safety occurs.

B. Revision to Unit 2 Overtemperature N–16 Reactor Trip Setpoints

Because the reactor core safety limits for CPSES Unit 2, Cycle 5 are recalculated, the Reactor Trip System instrumentation setpoint values for the Overtemperature N–16 reactor trip setpoint which protect the reactor core safety limits must also be recalculated. The Overtemperature N–16 reactor trip setpoint helps prevent the core and Reactor Coolant System from exceeding their safety limits during normal operation and design basis anticipated operational occurrences. The most relevant design basis analysis in Chapter 15 of the CPSES Final Safety Analysis Report (FSAR) which is affected by the Overtemperature reactor trip setpoint is the Uncontrolled Rod Cluster Control Assembly Bank Withdrawal at Power (FSAR Section 15.4.2). This event has been analyzed with the new safety analysis value for the Overtemperature reactor trip setpoint to demonstrate compliance with event specific acceptance criteria. Because all event acceptance criteria are satisfied, there is no degradation in a margin of safety.

The nominal Reactor Trip System instrumentation setpoint values for the Overtemperature N–16 reactor trip setpoint (Technical Specification Table 2.2–1) are determined based on a statistical combination of all of the uncertainties in the channels to arrive at a total uncertainty. The total uncertainty plus additional margin is applied in a conservative direction to the safety analysis trip setpoint value to arrive at the nominal and allowable values presented in Technical Specification Table 2.2–1. Meeting the requirements of Technical Specification Table 2.2–1 assures that the Overtemperature reactor trip setpoint assumed in the safety analyses remains valid. The CPSES Unit 2, Cycle 5 Overtemperature reactor trip setpoint is not significantly different from the previous cycle, and thus provides operational flexibility to withstand mild transients without initiating automatic protective actions. Although the value of the f(delta I) trip reset function setpoint is different, the Reactor Trip System instrumentation setpoint values for the Overtemperature N–16 reactor trip setpoint are consistent with the safety analysis assumptions which have been analytically demonstrated to be adequate to meet the applicable event acceptance criteria. Thus, there is no reduction in a margin of safety.

Using the NRC approved TU Electric methods, the reactor core safety limits are determined such that all applicable limits of the safety analyses are met. Because the applicable event acceptance criteria continue to be met, there is no significant reduction in the margin of safety.

C. Administrative changes to reflect plant nomenclature

Changes to the N–16 trip setpoint equation are for clarification only to more accurately reflect CPSES plant nomenclature. This change is administrative in nature and has no impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: December 10, 1998.

Description of amendment request: The licensee proposed to correct an error in the technical specifications by changing to the use of ''hydrogen, balance air'' rather than the incorrect ''hydrogen balance nitrogen'' for calibration of the Augmented Offgass System hydrogen monitors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Based on the criteria for defining a significant hazards consideration in 10CFR50.92, operation of VYNPS in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because:

The proposed change is purely administrative in nature—correcting instrument calibration requirements to conform the Technical Specification with the instrument manufacturer's recommendations. The change has no effect on plant hardware, plant design, safety limit setting, or plant system operation and therefore does not modify or add any initiating parameters that would significantly increase the probability or consequences of an accident previously evaluated. This change to the Technical Specifications is a correction of an error which occurred when the particular Technical Specification was issued. The function of this surveillance requirement remains unchanged.

No new modes of operation are introduced by the proposed change such that adverse consequences would result. Accordingly, the consequences of previously analyzed accidents are not affected by this proposed change.

The Augmented Off-Gas (AOG) System hydrogen monitors do not serve a reactor safety function. In this context, the determination of no significant hazards consideration defined in 10CFR50.92 is made based on the ''accident previously evaluated'' being a postulated hydrogen detonation within the off-gas system downstream of the hydrogen recombiners. The hydrogen monitors do not mitigate the consequences of an accident, but rather function to preclude a hydrogen explosion within the off-gas system. The function of the Augmented Off-Gas System hydrogen monitors to prevent a hydrogen detonation is not affected by this change.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because:

Since this change merely corrects Technical Specification wording to reflect the actual manufacturer's recommended gas mixture to be used for calibrating these instruments, no new or different types of accidents are created. Since the calibration gas mixture has a very low (approximately 2%) hydrogen concentration, its use does not introduce the possibility of fires, explosions, or other hazards which might adversely affect safety-related equipment. Therefore, use of the proper calibration gas does not create the possibility of a new or different kind of accident.

This change does not affect the operation of any systems or components, nor does it involve any potential initiating events that would create any new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated for the Vermont Yankee Nuclear Power Station.

(3) Involve a significant reduction in a margin of safety, because:

This proposed change involving the specification of the correct calibration gas mixture ensures that the off-gas system hydrogen monitors are properly calibrated and therefore preserve the margin of safety in precluding a hydrogen explosion in the off-gas system. Administratively changing this specification only establishes the appropriate calibration gas for the actual, installed hydrogen monitors. Changing the specification to reflect correct practice will not reduce the margin of safety.

The proposed change does not affect any equipment involved in potential initiating events or safety limits. Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Project Director: Cecil O. Thomas.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: July 30, 1998 (TSCR 206).

Description of amendment request: The purpose of the proposed amendments is to incorporate changes to the Technical Specifications to more clearly define the requirements for Service Water (SW) System operability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment[s] does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The Service Water System is primarily a support system for systems required to be operable for accident mitigation. Portions of the SW system supplying the containment fan coolers also function as part of the containment pressure boundary under post accident conditions. Failures within the SW system are not an initiating condition for any analyzed accident.

Analyses performed demonstrate that under the Technical Specifications allowable configurations, the SW system will continue to perform all required functions. The SW system is capable of supplying the required cooling water flow to systems required for accident mitigation. That is, the SW system removes the required heat from the containment fan coolers and residual heat removal heat exchangers ensuring containment pressure and temperature profiles following an accident are as evaluated in the FSAR [final safety analysis report]. This in turn ensures that environmental qualification of equipment inside containment is maintained and thus function as required post-accident.

SW system response post accident is within all design limits for the system. Transient and steady state forces within the system remain within all design and operability limits thereby maintaining the integrity of the system inside containment and the integrity of the containment pressure boundary. Assumptions dependent on containment pressure profile for containment leakage assumed in the radiological consequence analyses remain valid.

In addition, removing required heat from containment ensures that cooling

of the reactor core is accomplished for long-term accident mitigation.

Therefore, operation of the SW system as proposed will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the way in which the SW system performs its design functions nor the design limits of the system. The proposed changes do not introduce any new or different normal operation or accident mitigation functions for the system. Therefore, no new accident initiators are introduced by the proposed changes. Operation of SW system as proposed cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

Analyses performed in support of the proposed amendments demonstrate that the SW system continues to perform its function as assumed and credited in the accident analyses and radiological consequence analyses performed for the Point Beach Nuclear Plant. Therefore, the analyses and results are not changed. All analysis limits remain met. The SW system continues to be operated and responds within all design limits for the system. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments cannot result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 23, 1998 (TSCR 209).

Description of amendment request: The purpose of the proposed amendments is to remove the test requirements for snubbers from the Technical Specifications (TS). These requirements are already included in the Point Beach Nuclear Plant In-Service Inspection Program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

These changes do not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to delete TS 15.4.3. The proposed TS change does not introduce any new accident initiators.

Initiating conditions and assumptions are unchanged and remain as previously analyzed for accidents in the PBNP Final Safety Analysis Report. The proposed TS change does not involve any physical changes to systems or components, nor does it alter the typical manner in which the systems or components are operated. Therefore, these changes do not increase the probability of previously evaluated accidents.

As noted above, the snubber testing requirements included in the ASME/ANSI OM–4 Code are more comprehensive and in general more conservative than the snubber testing requirements currently contained in TS 15.4.13.

These changes do not involve a significant increase in the consequences of an accident or event previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. The snubber program ensures that snubbers function as required, therefore related systems continue to function as designed and analyzed. Existing system and component redundancy and operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the PBNP Final Safety Analysis Report are not invalidated. Therefore, these changes do not affect the consequences of previously evaluated accidents.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not introduce nor increase the number of failure mechanisms of a new or different type than those previously evaluated since there are no physical changes being made to the facility. As noted above, the snubber testing requirements included in the ASME code in general are more comprehensive than the snubber testing requirements currently contained in TS 15.4.13 and provide the requisite level of assurance of snubber operability. The design and design basis of the facility remain unchanged. The plant safety analyses remain unchanged. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not introduced.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety because existing component redundancy is not being changed by these proposed changes. There are no changes to the initial conditions contributing to accident severity or consequences, and safety margins established through the design and facility license including the Technical Specifications remain unchanged. Therefore, there are no significant reductions in a margin of safety introduced by [these] proposed amendment[s].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 7, 1998 (TSCR 207).

Description of amendment request: The purpose of the proposed amendments is to incorporate changes to the Technical Specifications (TS) to ensure the 4 kV bus undervoltage input to reactor trip is controlled in accordance with the design and licensing basis for the facility. One additional administrative change is requested which removes the footnote related to the definition of Rated Power in TS 15.1.j.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant [PBNP] in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed ensure the Point Beach Nuclear Plant continues to be operated in accordance with the design and licensing basis for the facility.

The first change removes a footnote qualifying the definition of Rated Power as applied to PBNP Unit 2. This restriction was eliminated with the replacement of Unit 2 steam generators as approved by Amendments 173 and 177, dated July 1, 1997. The analyses for those amendments were performed based on the minimum flow requirements specified in Technical Specification 15.3.1.G.3. The note should have been deleted from the Technical Specifications at that time. Elimination of this note does not result in a change in the operation of PBNP from that analyzed and approved in Amendments 173 and 177. Therefore, this change is administrative and cannot result in an increase in probability or consequences of an accident previously evaluated.

The second change modifies the Limiting Condition For Operation [LCO] for the undervoltage reactor trip protection function. This trip function is the primary protective function credited in the complete loss of flow event analysis in the Final Safety Analysis Report (FSAR) Section 14.1.8. As a primary protective function, this trip is required to be single failure proof as stipulated in proposed IEEE 279–1968 documented in FSAR Section 7.2. This change ensures that this protective feature is maintained in a condition where single failure considerations are satisfied. When single failure criteria cannot be met, appropriate action is stipulated to shutdown the unit placing it in a condition where the protective function is no longer required. Therefore, this change ensures PBNP is operated in accordance with its design and licensing basis and cannot result in an increase in the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes proposed by this request remove a footnote qualifying the definition of rated power as it applies to PBNP Unit 2 operation, and modify the LCO related to the undervoltage reactor trip protective function to ensure this function is maintained as required by the PBNP design and licensing basis. These changes are in agreement with approved analyses. These changes do not introduce any new accident initiators or alter the response of the PBNP Units to previously analyzed accidents. Therefore, operation of PBNP in accordance with the proposed changes cannot result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not create a significant reduction in a margin of safety.

Operation of the PBNP in accordance with the proposed amendments is within the bounds of approved design and licensing basis of the facility. The design and licensing basis establish appropriate margins of safety. Since operation of the PBNP remains within the approved design and licensing basis of the facility, a reduction in a margin of safety cannot result.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: November 18, 1998

Description of amendment request: The proposed amendment would revise the pressure/temperature (P/T) limits and the low-temperature overpressure protection (LTOP) requirements in the facility technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated.

Failure of a reactor vessel is not an accident that has been previously evaluated; design provisions ensure that this is not a credible event. Since the potential consequences of a reactor vessel failure are so severe, industry and governmental agencies have worked together to ensure that failure will not occur. Compliance with 10 CFR 50 Appendix G and H ensures that failure of a reactor vessel will not occur. The proposed changes do not impact the capability of the reactor coolant pressure boundary piping (i.e., no change in operating pressure, materials, seismic loading, etc.) and therefore do not increase the potential for the occurrence of a LOCA [loss-off-coolant accident].

The LTOP setpoint, revised enabling temperature, and revised P/T limits reflected in proposed Figures TS 3.1–1 and TS 3.1–2 ensure that the Appendix G pressure/temperature limits are not exceeded, and therefore, ensure that RCS integrity is maintained. The changes do not modify the reactor coolant system pressure boundary, nor make any physical changes to the facility design, material, construction standards, or setpoints. The reactor coolant system full power operating pressure (2235 psig) is not being changed by this proposed amendment. The LTOP valve setpoint remains at less than or equal to 500 psig. The LTOP enabling temperature based on Figure

TS 3.1–2 is 200°F and is consistent with ASME Code Case N–514 guidance of RT_{NDT} + 50°F. The revised enabling temperature is lower than the 355°F value in the current TS. However, the allowable combination of Appendix G pressures and temperatures (refer to the 0°F isothermal cooldown limit) is greater for the revised limit curves. The combination of greater allowable Appendix G pressure and temperature limits and lower enabling temperature produces a larger operating window. A larger operating window reduces the likelihood of inadvertently lifting the LTOP relief valve while maneuvering the plant through the knee of the P–T curve during startup and shutdown. The probability of an LTOP event occurring is independent of the pressure-temperature limits for the RCS [reactor coolant system] pressure boundary and enabling temperature. Therefore, the probability of a[n] LTOP event is not increased.

The revised heatup and cooldown limit curves and LTOP enabling temperature were developed using test results from unirradiated and/or irradiated specimens that represent the KNPP [Kewaunee Nuclear Power Plant] reactor vessel beltline circumferential weld, closure head flange, and intermediate forging. The circumferential beltline weld and intermediate forging are the most limiting materials in the reactor coolant pressure boundary due to the effects of neutron irradiation which cause the flow properties to increase and the toughness to decrease. 10 CFR 50, Appendix G states that the metal temperature of the closure flange regions must exceed the material unirradiated RT_{NDT} by at least 120°F for normal operation and 90°F for hydrostatic pressure tests and leak tests when the pressure exceeds 20 percent of the preservice hydrostatic test pressure. Drop weight and Charpy V-notch testing of IP3571 weld metal and the intermediate forging material has been performed and used for derivation of the revised PTS [pressurized thermal shock] assessment, the proposed Appendix G heatup and cooldown limit curves, and the corresponding LTOP system enabling temperature. The revised limit curves and corresponding LTOP enabling temperature have been developed using accepted engineering practices, methods derived from the ASME Boiler and Pressure Vessel Code, criteria set forth in NRC Regulatory Standard Review Plan 5.3.2, and 10 CFR 50.61. Utilization of the revised heatup and cooldown limit curves and corresponding LTOP enabling temperature ensures adequate fracture toughness for ferritic materials of the pressure-retaining components of the reactor coolant pressure boundary. These limit curves provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, and low temperature overpressure protection (corresponding to isothermal events during low temperature operations (i.e., less than or equal to 200°F)) thus ensuring the integrity of the reactor coolant pressure boundary.

The changes do not adversely affect the integrity of the RCS such that its function in the control of radiological consequences is affected. Radiological off-site exposures from normal operation and operational transients, and faults of moderate frequency do not exceed the guidelines of 10 CFR 100. In addition, the changes do not affect any fission product barrier. The changes do not degrade or prevent the response of the LTOP relief valve or other safety-related systems to previously evaluated accidents. In addition, the changes do not alter any assumption previously made in the radiological consequence evaluations nor affect the mitigation of the radiological consequences of an accident previously evaluated. Therefore, the consequences of an accident previously evaluated will not be increased.

Thus, operation of KNPP in accordance with the PA does not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously evaluated.

Since the potential consequences of a reactor vessel failure are so severe, industry and governmental agencies have worked together to ensure that failure will not occur. Compliance with 10 CFR 50 Appendix G and H ensures that failure of a reactor vessel will not occur. The proposed heatup and cooldown limit curves have been constructed by combining the most conservative pressure-temperature limits derived by using material properties of the intermediate forging, closure head flange, and beltline circumferential weld to form a single set of composite curves. With NRC approval to use Code Case N–588, the intermediate forging and closure head flange become the controlling materials for development of the heatup limit curve and the cooldown limit curves at low temperatures. At high temperatures, the circumferential weld continues to be limiting for development of the cooldown limit curves. Use of conservative pressure-temperature limits derived by using material properties of the intermediate forging, closure head flange, and beltline circumferential weld to form a single set of composite curves, does not modify the reactor coolant system pressure boundary, nor make any physical changes to the LTOP setpoint or design. Proposed Figures TS 3.1–1 and TS 3.1–2 were prepared in accordance with regulatory and code requirements and were derived using more conservative material property basis and more limiting requirements of neutron exposure projections thru 33 EFPY [effective full-power years] instead of 20 EFPY.

The revised LTOP system enabling temperature and the proposed Appendix G pressure temperature limitations were prepared using methods derived from the ASME Boiler and Pressure Vessel Code and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. The changes do not cause the initiation of any accident nor create any new credible limiting failure for safety-related systems and components. The changes do not result in any event previously deemed incredible being made credible. As such, it does not create the possibility of an accident different than previously evaluated.

The changes do not have any adverse effect on the ability of the safety-related systems to perform their intended safety functions. The combination of higher allowable Appendix G pressure and temperature limits and lower enabling temperature produces a larger operating window. The ASME Section XI, Working Group on Operating Plant Criteria (WGOPC) has prepared a technical bases document for Code Case N–514. The technical bases document is contained in Attachment 3 of Reference 1. This technical bases document provides justification for enabling the LTOP system at temperatures less than 200°F or at coolant temperatures corresponding to a reactor vessel metal temperature less than RT_{NDT} + 50°F, whichever is greater.

WGOPC, which has responsibility for Appendix G of Section XI, has considered the burden and safety impact imposed by the LTOP criteria, and has developed Code guidelines for determining the LTOP set-point pressure and the required enabling temperature. These guidelines will relieve some operational restrictions, yet provide adequate margins against failure for the reactor vessel. Further, by relieving the operational restrictions, these guidelines result in a reduced

potential for activation of pressure relieving devices, thereby improving plant safety. Thus, a slightly larger operating window at KNPP is viewed to reduce the likelihood of inadvertently lifting the LTOP relief valve while maneuvering the plant through the knee of the P–T curve during startup and shutdown. The new LTOP operating window (i.e., less than or equal to 200°F) is within the existing operating band for the residual heat removal system; operating procedures allow the LTOP system to be placed into service at <400°F. At KNPP, as long as the LTOP relief valve is operable, the LTOP system is enabled anytime the residual heat removal system is in communication with the reactor coolant system.

The proposed changes do not make physical changes to the plant or create new failure modes. Thus, the PA does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety.

The proposed Appendix G pressure temperature limitations and LTOP enabling temperature were prepared using methods derived from the ASME Boiler and Pressure Vessel Code, including Code Cases N–514 and N–588, and the criteria set forth in NRC Regulatory Standard Review Plan 5.3.2. Reference 1 to this letter provides information to support NRC approval to use Code Case N–514 and Code Case N–588 for the KNPP PTS evaluation, development of the heatup and cooldown limit curves, and establishment of the LTOP system enabling temperature. These documents and practices along with the calculational limitations specified in 10 CFR 50.61 are an acceptable method for implementing the requirements of 10 CFR 50 Appendices G and H.

Use of the methodology set forth in the ASME Boiler and Pressure Vessel Code, NRC Regulatory Standard Review Plan 5.3.2., 10 CFR 50.61, and 10 CFR 50 Appendices G and H ensures that proper limits and safety factors are maintained. Thus, the PA does not involve a significant reduction in the margin of safety.

The revised heatup and cooldown limit curves and LTOP system enabling temperature were prepared using drop weight and Charpy V-notch data for the beltline weld, closure head flange, and intermediated forging material along with practices described herein and methods derived from the ASME Boiler and Pressure Vessel Code and 10 CFR 50.61. The safety factors and margins used in the development of the limit curves and LTOP system enabling temperature meet the criteria set forth by these documents. Application of low leakage core designs decreases the rate of shift in transition temperature from ductile to nonductile behavior. The revised limit curves and LTOP enabling temperature provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests, and low temperature overpressure protection (corresponding to isothermal events during low temperature operations (i.e., less than or equal to 200°F)). With the preparation of the revised limit curves in accordance with the latest criteria and guidance, this PA ensures that proper limits and safety factors are maintained.

Thus, the PA does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Project Director: Cynthia A. Carpenter.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: May 15, 1998, as supplemented September 25 and October 13, 1998.

Brief description of amendment: The amendment would revise Technical Specification 5.5, ''Storage of Unirradiated and Spent Fuel'' to reflect a planned modification to increase the number of fuel assemblies that can be stored in the spent fuel pool from 2776 to 4086.

Date of publication of individual notice in Federal Register: November 24, 1998 (63 FR 64973).

Expiration date of individual notice: December 24, 1998.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Notice of of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3)

the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 16, 1998.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.3.1 ''Reactor Protective System (RPS) Instrumentation-Operating'' and TS 3.3.2, ''Reactor Protective System (RPS) Instrumentation-Shutdown,'' to clarify an inconsistency between the TS wording and the design bases as described in the TS Bases and the Updated Final Safety Analysis Report. Specifically, the change replaces the operating bypass input process variable, Thermal Power, in Footnotes (a), (b), and (d) of Table 3.3.1 and in the Note to Limiting Condition for Operation 3.3.2 with Nuclear Instrument Power.

Date of issuance: December 8, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 229 & 204.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 27, 1998 (63 FR 57320).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated December 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: April 25, 1996, as supplemented on September 5, 1996, August 8, 1997, March 26, July 31, and August 24, 1998.

Brief description of amendment: This amendment revises Technical Specifications (TSs) 3/4.5.F.1, ''Core and Containment Cooling systems'' to extend the allowed outage time (AOT) for the emergency diesels, TSs 3.9.B.1 and 3.9.B.4, ''Auxiliary Electrical System'' to reduce the AOT from 7 days to 3 days and reduce the AOT for the combination of an EDG and startup transformer or shutdown transformer from 72 hours to 48 hours, and add Configuration Risk Management Program in TS 5.5, ''Programs and Manuals'' of Section 5.0 ''Administrative Controls''. Various TS pages were re-numbered in Section 5.0. In addition, TSs 3.9, ''Auxiliary Electrical System,'' and 3.9.A, ''Auxiliary Electrical Equipment,'' have been reformatted to be consistent with TS 3.9.B approved in a previous amendment. The associated Bases sections have also been changed to reflect the new TSs.

Date of issuance: December 11, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 179.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 23, 1998 (63 FR 50934).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 15, 1997, as supplemented March 3, April 13, June 16, October 26, and November 5, 1998.

Brief description of amendments: The amendments revised the Technical Specifications to add new requirements for the main steamline break instrumentation and resolved issues related to Inspection and Enforcement Bulletin 80–04.

Date of Issuance: December 7, 1998.

Effective date: As of the date of issuance to be implemented coincident with implementation of the improved Technical Specifications.

Amendment Nos.: 234—Unit 1; 234—Unit 2; 233—Unit 3.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 24, 1997 (62 FR 50001).

The March 3, April 13, June 16, October 26, and November 5, 1998, letters provided clarifying information that did not change the scope of the July 15, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: September 24, 1998, as supplemented November 3, 1998.

Brief description of amendment: This amendment revised technical specification 3.1.2.8 in two places to change the term ''contained volume'' to usable volume.'' This change eliminates the potential for a non-conservative interpretation of the specification values for the Refueling Water Storage Tank and Boric Acid Storage Tank and thereby eliminates the need for temporary administrative controls, which have been used correctly to properly interpret the specification values as usable volumes.

Date of issuance: December 14, 1998.

Effective date: Effective immediately, to be implemented within 30 days.

Amendment No: 95.

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 4, 1998 (63 FR 59591).

The November 3, 1998, letter did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: August 17, 1998.

Brief description of amendment: The amendment reduces the load at which diesel generators are tested.

Date of issuance: December 14, 1998.

Effective date: December 14, 1998.

Amendment No.: 118.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 7, 1998 (63 FR 53949).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: August 1, 1997.

Brief description of amendments: The amendments delete a portion of a technical specifications surveillance test requirement that specifies that the steam driven auxiliary feedwater pumps be tested ''when the secondary steam supply pressure is greater than 310 psig.'' This removes any misunderstanding that the secondary steam pressure must be just above 310 psig for this test.

Date of issuance: December 10, 1998.

Effective date: December 10, 1998, with full implementation within 45 days.

Amendment Nos.: 225 and 209.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 31, 1997 (62 FR 68308).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of application for amendment: February 5, 1998.

Brief description of amendment: This amendment changes the Technical Specifications to update the terminology and references to 10 CFR 50.55a(f) and (g) consistent with the 1989 edition of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, and consistent with the second 10-year interval of the Inservice Inspections and Inservice Testing Program Plans.

Date of issuance: December 3, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 84

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: March 11, 1998 (63 FR 11920).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 3, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: August 8, 1996, as supplemented June 30, 1997 and August 26, 1998.

Brief description of amendments: The amendments eliminate the response time testing requirements for selected sensors and specified instrument loops for (1) the reactor protection system, (2) the isolation system, and (3) the emergency core cooling system.

Date of issuance: December 14, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 132 and 93.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1996 (61 FR 57489).

The June 30, 1997 and August 26, 1998, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 10, 1998, as supplemented October 16, 1998.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.6/4.6 and associated bases to relocate portions of the reactor coolant chemistry to the Updated Final Safety Analysis Report and to applicable plant procedures. Changes to the relocated requirements will be controlled by the provisions of 10 CFR 50.59.

Date of issuance: December 1, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 247.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 29, 1998 (63 FR 40560).

The October 16, 1998, submittal fell with the scope of, and did not change, the initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 30, 1998, as supplemented on October 27, 1998.

Brief description of amendment: The amendment revises the definition of logic system functional tests, and revises test frequency requirements for certain instrumentation.

Date of issuance: December 11, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 248.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 22, 1998 (63 FR 19978).

The October 27, 1998, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 12, 1998, as supplemented on October 12, 1998. The October 12, 1998, letter provided clarifying information that did not change the initial proposed no sigificant hazards consideration determination.

Brief description of amendments: The amendments revise TS 3/4.6.1.3, ''Containment Air Locks,'' to change the action statements for an inoperable air lock. The amendments also revise TS Bases 3/4.6.1.2, ''Containment Leakage,'' to correct an editorial error and TS Bases 3/4.6.1.3, ''Containment Air Locks,'' to provide additional details regarding the air locks.

Date of issuance: December 2, 1998.

Effective date: December 2, 1998.

Amendment Nos: 215 and 195.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 9, 1998 (63 FR 48265).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1998

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 31, 1997, as supplemented by letter dated September 11, 1998.

Brief Description of amendments: The amendments revised the Technical Specifications (TSs) to change the intermediate range neutron flux reactor trip setpoint and allowable value, and delete the reference to the reactor trip setpoints in TS 3.10.3, ''Special Test Exceptions—Physics Tests,'' and TS 3.10.4, ''Special Test Exceptions—Reactor Coolant Loops.''

Date of issuance: December 8, 1998.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—140; Unit 2—132.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6998).

The September 11, 1998, letter provided clarifying information that did not change December 31, 1997, application or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 20, 1996 (TS 96–09).

Brief description of amendments: The amendments change the Technical Specifications to clarify the types of work shifts that are acceptable when considering the requirements to ensure overtime is not heavily used on a routine basis by unit staff.

Date of issuance: December 7, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 240 and 230.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: November 4, 1998 (63 FR 59596).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 7, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 22, 1998, as supplemented on August 27 and October 8, 1998 (TS 96–08). The August 27, 1998, amendment request superseded the original (August 22, 1998) request in its entirety.

Brief description of amendments: The amendments revise the Sequoyah Nuclear Plant Technical Specifications by extending the allowed outage time for the SQN emergency diesel generators from 72 hours to 7 days.

Date of issuance: December 16, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 241 and 231.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in Federal Register: October 9, 1996 (61 FR 52969), superseded by a second notice on September 9, 1998 (63 FR 48270). The October 8, 1998, letter provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: July 28, 1998, as supplemented October 16, 1998. The October 16, 1998, letter was administrative in nature and did not change the initial no significant hazards consideration determination.

Brief description of amendments: The amendments revise the Technical Specifications to change the Emergency Diesel Generator section to be consistent with station procedures associated with steady-state conditions.

Date of issuance: December 10, 1998.

Effective date: December 10, 1998.

Amendment Nos.: 216 and 197.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 9, 1998 (63 FR 48272).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 10, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special

Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Dated at Rockville, Maryland, this 23rd day of December 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–34440 Filed 12–29–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40826; File No. SR–NASD–98–80]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to the Issuance of Temporary Cease and Desist Orders

December 22, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its regulatory subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Association amended the proposal on December 15 and 16, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to create the Rule 9800 Series and to amend certain existing NASD Rules of the Association to establish procedures to enable the Association to issue temporary cease and desist orders. The proposed rule change also would grant the NASD authority to initiate non-summary proceedings when temporary or permanent cease and desist orders are violated. The text of the proposed rule change follows. Additions are *italicized*; deletions are [bracketed].[4]

8300. Sanctions

8301. Sanctions for Violation of the Rules

(a) Imposition of Sanctions

After compliance with the Rule 9000 Series, the Association may impose one or more of the following sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or Rules of the Association, or may impose one or more of the following sanctions on a member or person associated with a member for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of the Association:

(5) suspend or bar a member or person associated with a member from association with all members; [or]

(6) [impose any other fitting sanction.]*impose a temporary or permanent cease and desist order against a member or a person associated with a member; or*

(7) impose any other fitting sanction.

* * * * *

IM–8310–2. Release of Disciplinary Information

* * * * *

(d)(1) The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. *The Association also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series.*

* * * * *

(h) If a final decision of the Association is not appealed to the Commission, the sanctions specified in the decision (other than bars, [and] expulsions, *permanent cease and desist orders, and temporary cease and desist orders*) shall become effective on a date established by the Association but not before the expiration of 30 days after the date of the decision. Bars, [and] expulsions, *permanent cease and desist orders, and temporary cease and desist orders,* however, shall become effective upon issuance of the decision, unless the decision specifies otherwise. *An appeal to the Commission of a decision that imposes a permanent cease and desist order or a temporary cease and desist order shall not stay the effectiveness of such orders, unless the Commission specifies otherwise.*

9000. CODE OF PROCEDURE

9100. Application and Purpose

* * * * *

9120. Definitions

* * * * *

(x) ''Party''

With respect to a particular proceeding, the term ''Party'' means:

(1) in the Rule 9200 Series, [and] the Rule 9300 Series, *and the Rule 9800 Series,* the Department of Enforcement or a Respondent;

* * * * *

9200. DISCIPLINARY PROCEEDINGS

* * * * *

9240. Pre-Hearing Conference and Submission

9241. Pre-Hearing Conference

* * * * *

(c) Subjects to be Discussed

At a pre-hearing conference, the Hearing Officer *shall schedule an expedited proceeding if required by Rule 9290, and* may consider and take action with respect to any or all of the following:

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The first amendment to the proposal included changes to the evidentiary standard and the tenure of a temporary cease and desist order. *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 15, 1998. On December 16, 1998, the NASD made further non-substantive changes to the proposed rule language at a meeting between Peter Geraghty, Assistant General Counsel, NASD Regulation, and Mandy S. Cohen, Special Counsel, and Anitra T. Cassas, Attorney, Division, Commission. *See* Memorandum entitled: Meeting with Staff of NASD regulation, dated December 17, 1998. The NASD also agreed to extend the public comment period to sixty days by letter dated December 21, 1998. *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Divisions, Commission.

[4] Language in proposed rules IM–8310–2, 9360, 9500, 9510, 9511, and 9513 includes changes proposed in File No. SR–NASD–98–56. *See* Securities Exchange Act Release No. 34–40378 (August 27, 1998), 63 FR 47058 (September 3, 1998). Language in proposed rule 9120 includes changes proposed in File No. SR–NASD–98–90. *See* Securities Exchange Act Release No. 34–40755 (December 7, 1998), 63 FR 68814 (December 14, 1998). For purposes of this notice, the proposed rule language in File Nos. SR–NASD–98–56 and 98–90 is treated as approved.

9290. Expedited Disciplinary Proceedings

For any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to Rule 9810 or a temporary cease and desist order, hearings shall be held and decisions shall be rendered at the earliest possible time. An expedited hearing schedule shall be determined at a pre-hearing conference held in accordance with Rule 9241.

9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL ADJUDICATORY COUNCIL AND NASD BOARD; APPLICATION FOR COMMISSION REVIEW

9310. Appeal to or Review by National Adjudicatory Council

9311. Appeal by Any Party; Cross-Appeal

* * * * *

(b) Effect

An appeal to the national Adjudicatory Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the National Adjudicatory Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the NASD Board, until a decision is issued pursuant to Rule 9351. *Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.*

* * * * *

9312. Review Proceeding Initiated By National Adjudicatory Council

* * * * *

(b) Effect

Institution of review by a member of the National Adjudicatory Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the General Counsel, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the National Adjudicatory Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the NASD Board, until a decision is issued pursuant to Rule 9351. *Institution of any such review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.*

9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar, [or] an expulsion, *or a permanent cease and desist order*) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1) shall become effective 30 days after the date of service of the decision constituting final disciplinary action. A bar, [or] an expulsion, *or a permanent cease and desist order* shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d–1(c)(1), unless otherwise specified therein. The Association shall take reasonable steps to obtain personal service of a Respondent when the sanction is a bar or an expulsion.

9500. OTHER PROCEEDINGS

9510. Summary and Non-Summary Proceedings

9511. Purpose and Computation of Time

(a) Purpose

The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; [or](C) an advertising pre-use filing requirement; *or (D) a suspension or cancellation of the membership of a member or the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.*

* * * * *

9513. Initiation of Non-Summary Proceeding

(a) Notice

Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(A) or (B), by issuing a written notice to the member, associated person, or other person. *Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(D), after receiving written authorization from the President or Chief Operating Officer of the Association, by issuing a written notice to the member or associated person.* The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. *In addition, if the proceeding is authorized under Rule 9511(a)(2)(D), the notice shall specifically identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, and shall contain a statement of facts specifying the alleged violation.* The notice shall be served by facsimile or overnight commercial courier.

(b) Effective Date

For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action taken pursuant to Rule 9511(a)(2)(B) *or (D),* the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice.

9800. TEMPORARY CEASE AND DESIST ORDERS

9810. Initiation of Proceeding

(a) Department of Enforcement

With the prior written authorization of the President or Chief Operating Officer of NASD Regulation, Inc., the Department of Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Securities and Exchange Act of 1934 and SEC Rule 10b–5 thereunder; SEC Rules 15g–1 through 15g–9; NASD Rule 2110 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933); NASD Rule 2120; or NASD Rule 2330 (if the alleged violation is misuse or conversion of customer assets). The Department of Enforcement shall initiate the proceeding by serving a notice on a member or associated person (hereinafter ''Respondent'') and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement shall serve the notice by personal service, overnight commercial courier, or facsimile. If service is made by facsimile, the Department of Enforcement shall send an additional copy of the notice by overnight commercial courier. The notice shall be effective upon service.

(b) Contents of Notice

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Department of Enforcement is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Department of Enforcement is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(1) *a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation; and*

(2) *a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the orders issuance), which are set forth in Rule 9840(b).*

(c) Filing of Underlying Complaint

If the Department of Enforcement has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Department of Enforcement shall serve such a complaint with the notice initiating the temporary cease and desist proceeding.

9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after the Department of Enforcement files a copy of the notice initiating a temporary cease and

desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. The Panelists shall be current or former Governors, Directors, or National Adjudicatory Council members, and at least one Panelist shall be an associated person.

(b) If at any time a Hearing Officer or Hearing Panelist determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer or Hearing Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233 and 9234, except that:

(1) a motion seeking disqualification of a Hearing Officer or Hearing Panelist must be filed no later than 5 days after the later of the events described in paragraph (b) of Rules 9233 and 9234; and

(2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice initiating the temporary cease and desist proceeding, unless a Hearing Officer or Hearing Panelist is recused or disqualified, in which case the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

(b) Service of Notice of Hearing

The Hearing Officer shall serve a notice of date, time, and place of the hearing on the Department of Enforcement and the Respondent not later than four days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, or facsimile. If service is made by facsimile, the Hearing Officer shall send an additional copy of the notice by overnight commercial courier. The notice shall be effective upon service.

(c) Authority of Hearing Officer

The Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

(d) Witnesses

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(e) Additional Information

At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decisions.

(f) Transcript

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter as prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter as prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(g) Record and Evidence Not Admitted

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 9810(b); the transcript of the hearing; and all evidence considered by the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(h) Failure to Appear at Hearing

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings. If the Department of Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

(a) Basis for Issuance

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) by a preponderenace of the evidence that the alleged violation specified in the notice has occurred; and

(2) *that the violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 9200 and 9300 Series.*

(b) Content, Scope, and Form of Order

A temporary cease and desist order shall:

(1) *be limited to ordering a Respondent to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent to cease and desist from dissipating or covering assets or causing other harm to investors;*

(2) *set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;*

(3) *describe in reasonable detail the act or acts the Respondents is to take or refrain from taking; and*

(4) *include the date and hour of its service.*

(c) Duration of Order

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269.

(d) Service

The Hearing Officer shall serve the Hearing Panel's decision and any temporary cease and desist order by personal service, overnight commercial courier, or facsimile. If service is made by facsimile, the Hearing Officer shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by overnight commercial courier. The temporary cease and desist order shall be effective upon service.

9850. Review by Hearing Panel

At any time after the Hearing Officer serves the Respondent with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request. The Hearing Panel's response shall be served on the Respondent via personal service, overnight commercial courier, or facsimile. If service is made by facsimile, the Hearing Officer shall send an additional copy of the temporary cease and desist order by overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

9860. Violation of TCDO

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled under the Rule 9510 Series. The President or Chief Operating Officer of NASD Regulation, Inc., must authorize the initiation of any such proceeding in writing.

9870. Application to Commission for Review

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by the Association. The right to have any action under this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of temporary cease and desist order, unless the Commission otherwise orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Association included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Association has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(i) Background

In 1997, the Commission approved a proposed rule change filed by the Association that, among other things, removed from the NASD's rules the provision that granted the NASD the authority to conduct Expedited Remedial Proceedings.[5] These rules were intended to provide the Association with a mechanism to take appropriate remedial action against an NASD member or an associated person if the member or associated person had engaged and there was a reasonable likelihood that the member or person would again engage in securities law violations.[6] Unfortunately, the rules did not serve their intended purpose. In the proposed rule change removing these rules, the NASD stated that it would file a proposed rule change in the future that would propose a different approach to expedited remedial proceedings.[7] This proposal contains the alternative approach.

The proposed rules are based upon and closely mirror the SEC rules pertaining to temporary cease and desist orders,[8] but with increased procedural protections in some respects. For example, the SEC rules permit a temporary cease and desist order to be entered against a person without prior notice and an opportunity for a hearing. Such ex parte proceedings are not permitted under the rules proposed by the NASD. In addition, under the rules the NASD is proposing, a temporary cease and desist proceeding can be initiated only with respect to alleged violations of certain sections of the securities laws and certain NASD rules. The SEC rules have no such limitation.

(ii) NASD Notice to Members 98–42

The NASD issued a Notice to Members in June 1998 to solicit comment on proposed temporary cease and desist rules that differed in a number of respects from the proposal contained in this filing.[9] The comment period closed on July 31, 1998. The Association received 13 comment letters in response.[10] While three commentators expressed support for the Association's overall goal of effective regulation of the securities markets, none of the commentators voiced support for the proposal. The commentators generally stated that the Association has not justified the need for the rules and, if adopted, the rules lacked sufficient procedural protections for proposed respondents (hereinafter referred to as ''Respondents''). One commentator questioned whether the Act provides self-regulatory organizations with the authority to issue temporary cease and desist orders. As discussed in greater detail later, the Association believes that the Act does provide it with the authority, and that the proposed rules are both necessary and fair. The staff has carefully reviewed all comments and, as a result, modified the proposal in many significant respects. These changes will:

- Limit markup violations for which temporary cease and desist orders can be pursued to those violations involving fraudulent markups;
- Require that a hearing panel find by a preponderance of the evidence that a violation occurred;
- Require that the disciplinary action underlying a temporary cease and desist order be conducted on an expedited basis;
- Limit the duration of a temporary cease and desist order;
- Require that a member or associated person being charged with violating a temporary or permanent cease and desist order be notified of the specific provision of the order alleged to have been violated and that the notification be accompanied by specific facts supporting the alleged violation; and
- Specify that temporary cease and desist orders are final and immediately effective decisions of the NASD that can be appealed to the SEC under Section 19 of the Exchange Act.

(iii) Need for Temporary Cease and Desist Authority

The Association believes there is a clear need for an additional tool to stop members' or associated persons' misconduct that causes significant dissipation of or conversion of assets or other significant harm to investors while a disciplinary action is pending. While NASD Regulation litigates disciplinary actions involving limited capitalization, or microcap, securities, for example, investors may continue to lose substantial sums.[11] Without a temporary cease and desist rule, the Association has no immediate means to order cessation of egregious, ongoing violative conduct.

Several commentators believe that the Association's regular disciplinary proceedings provide sufficient measures to combat the violative conduct that concerns the NASD. The Association disagrees. Temporary cease and desist orders would be pursued in cases where the Association believes significant dissipation or conversion of assets or other significant harm to investors is likely to occur before a disciplinary proceeding under the Rules of the Association is concluded. In addition, under the NASD's current rules, it takes a minimum of four months to complete a disciplinary proceeding. This scenario assumes that the action is not settled and that each aspect of the proceeding occurs without delay. The Association's experience with microcap fraud is that investor losses tend to occur quickly, over very short periods of time.

One commentator suggested that the Association could use its summary suspension authority to address egregious cases of fraud, while another commentator suggested that the NASD could use its non-summary suspension authority in such circumstances. The NASD believes that it, and any other self-regulatory organization, can summarily suspend a member or associated person only in the limited situations that are described in Section 15A(h)(3) of the Act, which do not include the types of situations the Association is attempting to address with the temporary cease and desist rules. The NASD's non-summary suspension rules[12] also can be used only in limited situations that do not include the types of situations that the

[5] *See* Securities Act Release No. 38908 (August 7, 1997), 62 FR 43387 (August 13, 1997) (File No. SR–NASD–97–28).

[6] Under these rules, the NASD was authorized to suspend, limit, or condition a broker-dealer's membership or suspend, limit, or condition a person's association with a broker-dealer.

[7] *See* Release No. 34–38908.

[8] *See* 17 CFR 201.500–201.514.

[9] *See* NASD Notice to Members 98–42 (June 1998) (''NTM–98–42'').

[10] *See* Letters from PIM Financial Services, Inc. (June 18, 1998); Choice Investments (June 19, 1998); Dan Jamieson (June 19, 1998); Cunner & Company (June 24, 1998); Wulff, Hansen & Co. (June 22, 1998); Combined Research & Trading, Inc. (June 22, 1998); A.G. Edwards & Sons, Inc. (June 26, 1998); Dortch Securities & Investments, Inc. (July 10, 1998); Whale Securities Co., L.P. (July 17, 1998); Orrick, Herrington & Sutcliffe LLP (July 17, 1998); Securities Industry Association, Compliance and Legal Division (August 5, 1998); Securities Industry Association, Federal Regulation Committee and Self-Regulation and Supervisory Practices Committee (August 17, 1998); and American Bar Association, Section of Litigation and Business Law (August 18, 1998).

[11] While the need for temporary cease and desist authority is often expressed in the context of microcap fraud, it is not necessarily so limited. Temporary cease and desist orders could be used to address fraudulent conduct in many contexts.

[12] NASD Rules 9511(a)(2) and 9513.

Association is attempting to address. For example, the NASD, after notice and opportunity for a hearing, may suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments or other charges, or for failure to comply with an arbitration award or settlement agreement. In addition, the non-summary suspension rules and temporary cease and desist rules are designed for different purposes. Non-summary suspension proceedings are designed to limit or stop a member's or associated person's ability to conduct business, whereas temporary cease and desist orders are designed to stop ongoing, violative conduct while an underlying disciplinary proceeding is being litigated.

In addition, some commentators believe that the NASD could refer cases to the SEC or a state regulatory authority for prosecution where an emergency exists. The Association's experience demonstrates that this is not a viable alternative to the proposed rule. Even though the NASD, the SEC and other regulators have made great strides in coordinating their respective enforcement efforts, this is not a substitute for temporary cease and desist authority. There are situations where the Association is in the best position to take immediate action, based on its preexisting investigation and access to case-specific information. In such situations, the need to refer the case to another regulatory authority might result in unacceptable delay and would not be an efficient use of the Association's or other regulators' resources.

(iv) Authority for Issuing Temporary Cease and Desist Orders

The Association believes that relevant provisions of the Act provide self regulatory organizations with the authority to issue temporary cease and desist orders. Section 15A(b)(2) of the Act, among other things, requires that an association of brokers and dealers have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the Association. In addition, Section 15A(b)(6) requires that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Section 15A(b)(7) permits an association to sanction its members and persons associated with members in many different ways, including through the imposition of any ''fitting sanction,'' and Section 15A(b)(8), among other things, requires that the rules of an association, in general, provide a fair procedure for disciplining members and persons associated with members. The proposed rules are consistent with the Association's obligations under Sections 15A(b)(2), (6), (7), and (8) because temporary cease and desist orders are fitting sanctions designed to stop violative conduct that is likely to cause significant dissipation or conversion of assets or other significant harm to investors, subject to the specific procedures contained in the rules.

(v) Due Process Protections

The Association recognizes that temporary cease and desist orders are powerful measures that should be used very cautiously. Consequently, the rules have been designed to ensure that the proceedings are used to address only the most serious types of misconduct and that the interests of Respondents are protected. For example, to ensure that temporary cease and desist proceedings are used appropriately and that he decision to initiate a proceeding is made only at the highest staff levels, the proposed rules require the President or Chief Operating Officer of NASD Regulation to issue written authorization before NASD Regulation's Department of Enforcement can institute a temporary cease and desist proceeding. Two commentators stated that the President or Chief Operating Officer should be required to follow specific guidelines or meet a specific standard before authorizing temporary cease and desist proceeding. The Association believes that such guidelines or standards already exist. The Association believes it is implicit that the President or Chief Operating Officer must be convinced by a preponderance of the evidence that the alleged violation has occurred, and the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to completion of the disciplinary proceeding under the Rule 9200 and 9300 Series. This is the same standard that guides the hearing panel in determining whether to issue a temporary cease and desist order.

In addition, the NASD proposes limiting use of this tool to only the most serious offenses. A temporary cease and desist proceeding can be initiated only with respect to alleged violations of certain sections of the securities laws and certain NASD rules.[13] In addition, the alleged violations of NASD rules for which a temporary cease and desist proceeding can be initiated are further limited to circumstances involving fraud, unauthorized trading, misuse or conversion of customer assets, or markups.

In the NTM–98–42, the Association proposed pursuing temporary cease and desist orders in cases in which the Department of Enforcement alleged that the markups were excessive and in violation of Rule 2110. Two commentators believed it would be inappropriate to pursue a temporary cease and desist order for excessive markups because of the degree of uncertainty involved in determining appropriate markups. In response to the comments, the Association has modified the proposal to permit temporary cease and desist orders only in cases in which it is alleged that the markups are fraudulent under Section 10(b) of the Exchange Act, SEC Rule 10b–5 thereunder, or NASD Rule 2120.

The proposed rules are based upon the rules that govern NASD disciplinary proceedings, with certain modifications made to reflect that temporary cease and desist proceedings are expedited proceedings. The proposed rules therefore provide Respondents with many procedural protections.

In addition, once the President or Chief Operating Officer of NASD Regulation has provided written authorization to initiate a temporary cease and desist proceeding, the Department of Enforcement must file a notice with the Office of Hearing Officers and serve the Respondent with a copy of the notice. The notice must set forth the rule or statutory provision the Respondent is alleged to have violated, include a declaration of facts that specifies the acts or omissions that constitute the alleged violation,[14] and

[13] The sections and rules are specified in proposed NASD Rule 9810(a) and are limited to alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder, Rules 15g-1 through 15g-9 under the Act and NASD Rules 2110, 2120, or 2330. The alleged violations of NASD rules for which a temporary cease and desist proceeding can be initiated are further limited. For NASD Rule 2110, which governs standards of commercial honor and principles of trade, the alleged violations are limited to circumstances involving alleged violations of Section 17(a) of Securities Act of 1933, or circumstances involving unauthorized trading or misuse or conversion of customer assets. For Rule 2330, which governs members' use of customers' securities or funds, the alleged violations for which a temporary cease and desist proceeding can be initiated are limited to circumstances involving misuse or conversion of customer assets.

[14] The declaration of facts must be signed by a person with knowledge of the facts contained in the declaration. Such persons may include the Association staff.

must contain a proposed order that contains the required elements of a temporary cease and desist order.[15] In addition, if the Department of Enforcement has not already issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provisions specified in the notice initiating the temporary cease and desist proceeding, the Department must serve such a complaint with the notice initiating the temporary cease and desist proceeding.

Further, a hearing to determine whether a temporary cease and desist order should be issued must be held within 15 days after service of the notice (unless a Hearing Officer or Hearing Panelist is recused or disqualified),[16] and the Respondent must be served with notice of the date, time, and location of the hearing not later than four days before the hearing,[17] unless the Hearing Officer orders otherwise. One commentator believes that requiring the hearing to be held within 15 days after service of the notice does not provide a Respondent with sufficient time to prepare for the hearing and, by way of comparison, notes that the Securities Act of 1933 and the Act require that hearings in SEC temporary cease and desist proceedings be held no earlier than 30 days nor later than 60 days after service of the notice. The Association believes that conducting the hearing within 15 days after service of the notice is appropriate because its rules would require the notice initiating the proceeding to have sufficient detail of the alleged violation.[18] In addition, these proceedings are designed to occur on an expedited basis so as to stop ongoing violative conduct that is likely to cause significant dissipation or conversion of assets or other significant harm to investors before the underlying disciplinary proceeding is concluded.

Each hearing panel would be appointed by the Chief Hearing Officer of the NASD's Office of Hearing Officers, and would be comprised of a hearing officer and two panelists. The two panelists would be selected from a roster of candidates that is comprised of current or former members of the National Adjudicatory Council, NASD Board of Governors, or the Association Board of Directors, and at least one panelist would have to be an associated person. A hearing officer, who is an attorney and an employee of the Association, would preside over each proceeding and would have the authority to do all things necessary and appropriate to discharge his or her own duties as set forth in Rule 9235.

One commentator suggested that the same hearing panel that issued the temporary cease and desist order be assigned to hear the disciplinary proceeding. The Association agrees that this is desirable whenever possible. The class of persons eligible to serve on a temporary cease and desist hearing panel, however, is more limited than the class eligible to serve on disciplinary hearing panels, so such dual service may not be possible in all situations. The Association would attempt to use the same panels whenever possible.

The proposed rules also set a specific standard that must be met before a hearing panel can issue such a temporary cease and desist order. A hearing panel must find by a preponderance of the evidence that the alleged violation has occurred, which is the same evidentiary standard used in the underlying disciplinary proceeding. The hearing panel also must find that the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to completion of the disciplinary proceeding under the Rule 9200 and 9300 Series. This standard is designed to ensure that a temporary cease and desist order cannot be issued for technical violations of rules, but can be issued only if the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors before completion of the underlying disciplinary proceeding.

Several commentators believe that the hearing panels should be required to find a likelihood of success on the merits and irreparable harm to investors, and should explicitly consider the effect of the order on the Respondent. While the Association believes that the ''likelihood of success'' standard is inappropriate in the context of the other required showings, it does agree that there should be an express evidentiary standard in the rule. Thus, in response to the commentators' concerns, the proposed rules require that there be a preponderance of evidence of a violation of one of the specified rules before an order can be issued. The preponderance of evidence test would be in addition to the requirement that the alleged violative conduct or the continuation thereof be likely to result in significant dissipation or conversion of assets or other significant harm to investors.

The Association believes that an irreparable harm standard would frustrate its attempt to stop ongoing fraudulent activity. Under such a standard, as long as a member could show that it is solvent and at the time could pay any potential arbitration or mediation awards while the disciplinary action is proceeding, the Association would be unable to stop the ongoing fraudulent activity until the completion of the regular disciplinary proceeding. Too often, the member's financial condition significantly changes after the conclusion of the disciplinary proceeding. Indeed, in a number of recent cases, the member firm filed for bankruptcy or went into the Securities Industry Protection Corporation, known as SIPC, liquidation during or immediately after the completion of a NASD disciplinary action. Finally, the Association believes that once it has been shown that the violative conduct or the continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors, the potential harm to the Respondent if an order is issued is overshadowed by the harm that is likely to occur to investors if the order is not issued.

A hearing panel must issue a written decision within ten days of receiving the transcript of the hearing. If a hearing panel decides that a temporary cease and desist order should be issued, the order must direct the Respondent to cease and desist from violating specific rule or statutory provisions and, where applicable, to cease and desist from dissipating or converting assets or causing other harm to investors. The order also must set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of the order, and it must describe in reasonable detail the act or acts the Respondent is to take or refrain from taking.[19] A temporary cease and desist order issued to stop unauthorized trading, for example, would order a Respondent to cease and desist from violating NASD Rule 2110 by directing the Respondent to stop the practice of executing unauthorized trades for customers' accounts. The order would not instruct the Respondent to cease and desist from conducting business with customers.

[15] The required elements of a temporary cease and desist order are set forth in proposed Rule 9840(b).

[16] *See* proposed Rule 9830(a).

[17] The Association believes that a four day notice requirement should provide the Respondent with sufficient notice prior to the initiation of a hearing.

[18] *See* proposed Rule 9810(b).

[19] The order also must include the date and hour of its issuance.

(vi) Publicizing Issuance of a Temporary Cease and Desist Order

If a hearing panel issues a temporary cease and desist order, the Association would publicize the issuance of the order, just as it publicizes the issuance of other final decisions in disciplinary proceedings that result in significant sanctions. Accordingly, the proposed rule change modifies IM–8310–2 to permit the release of this information. When issuance of a temporary cease and desist order is made public, if applicable, a statement would accompany the public release indicating that the decision could still be appealed to the Commission or that the appeal is pending.

(vii) Duration of Temporary Cease and Desist Orders

Once a temporary cease and desist order has been issued, it will remain in effect until a decision is issued in the underlying disciplinary proceeding.[20] Two commentators suggested that, in any disciplinary proceeding for which a temporary cease and desist order has been issued, the disciplinary proceeding should be conducted on an expedited basis. The NASD agrees with this suggestion and has proposed Rule 9290, which would require that in any disciplinary proceeding for which a temporary cease and desist order has been issued, every hearing shall be held and every decision shall be rendered at the earliest possible time.

In addition, a Respondent is provided the opportunity to challenge a temporary cease and desist order, pursuant to Rule 9850, if it believes the underlying disciplinary proceeding is not being conducted on an expedited basis. If a Respondent can prove by a preponderance of the evidence that the underlying disciplinary proceeding is not being conducted on an expedited basis due to bad faith conduct by the Association, the hearing panel that issued the temporary cease and desist order can modify, set aside, limit, or suspend the order as it believes is appropriate. If a challenge on such a basis is pursued by a Respondent, the hearing panel's consideration would be limited to determining whether the underlying disciplinary proceeding was not being conducted on an expedited basis due to the bad faith conduct of the Association.

The proposed rules provide Respondents with several opportunities to challenge a temporary cease and desist order. A Respondent may apply to the hearing panel, pursuant to proposed Rule 9850, to have the order modified, set aside, limited, or suspended, or the Respondent may challenge the order by filing an application for review with the SEC pursuant to Section 19 of the Exchange Act.[21] A Respondent challenging an order, however, will not stay the effectiveness of the order, unless otherwise ordered by the Commission.

Two commentators raised a concern about the ability of a Respondent to appeal decisions issuing temporary cease and desist orders to the SEC because it was unclear whether temporary cease and desist orders are final disciplinary decisions of the NASD. The Association believes temporary cease and desist orders should be considered final and immediately effective decisions of the NASD and therefore appealable to the SEC as soon as the orders are issued. A temporary cease and desist order is issued after notice and an opportunity for a hearing and upon a finding by a preponderance of the evidence that a violation of a statutory provision or rule has occurred. The temporary cease and desist order is an ''other fitting sanction'' under Section 15A(b)(7) of the Act because the order directs a Respondent to cease from violating a rule, to cease specified violative conduct and, as appropriate, to cease and desist from dissipating or converting assets. Further, a temporary cease and desist order is immediately effective and enforceable, and a Respondent that violates the terms of a temporary cease and desist order can have its membership or registration suspended or canceled.

(viii) Enforcement of Cease and Desist Orders

In order for temporary cease and desist orders, or permanent cease and desist orders issued pursuant to disciplinary proceedings conducted under Rule 9200 Series or Rule 9300 Series, to have their full effect it is necessary to have a mechanism to enforce such orders and to be able to sanction members or associated persons that violate the orders. Consequently, the proposed rule change seeks to provide the Association with the authority to suspend or cancel a Respondent's membership or association if it is found, after a proceeding pursuant to Rule 9510 Series,[22] that a Respondent violated a temporary cease and desist order or a permanent cease and desist order. The proposed rule change provides that a proceeding to suspend or cancel a Respondent's association or membership for violating an order cannot be initiated unless it is authorized in writing by the President or Chief Operating Officer of NASD Regulation.[23] This provision ensures that decisions that can have a significant impact on a Respondent are made only at the highest staff level.

In addition, under the proposed rules, in any proceeding initiated pursuant to the Rule 9510 Series to sanction a member or associated person for violating a temporary or permanent cease and desist order, NASD Regulation would be required to specifically identify in the notice initiating the proceeding the provision of the temporary or permanent cease and desist or der that is alleged to have been violated, and the notice must contain a statement of facts specifying the alleged violation. These provisions were included in response to a suggestion by a commentator.

(ix) Report to Board of Directors

The Association recognizes that temporary cease and desist orders are new and powerful enforcement tools. Therefore, the Association staff is required to report to the Board of Directors of the Association (''Board''), within two years after the effective date of the rules (if the rules are approved by the SEC), on the staff's experience with the rules and obtain the Board's authorization to continue to exercise authority under the rules. This report will enable the Board to assess whether the authority is being exercised as it had envisioned.

2. Statutory Basis

The Association believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act, which requires, among other things, that an association of brokers and dealers have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its

[20] The hearing panel issuing the decision in the underlying disciplinary proceeding, however, may issue a permanent cease and desist order as part of the sanctions, if any, imposed pursuant to the underlying disciplinary proceeding. The effectiveness of a permanent cease and desist order would not be stayed if the Respondent appeals the decision in the underlying disciplinary proceeding.

[21] Section 19 of the Exchange Act provides for the appeal of final disciplinary sanctions imposed by self-regulatory organizations.

[22] The Rule 9510 Series sets forth the procedures for summary and non-summary suspension, cancellation, bar, limitation, or prohibition. Pursuant to the proposed amendment Rule 9511, the sanctions for a violation of a temporary or permanent cease and desist order are limited to suspension of cancellation of the membership of a member of the registration of a person.

[23] *See* proposed Rule 9860.

members with the Act, the rules and regulations thereunder, and the rules of the Association. In addition, the Association believes the proposed rule change is consistent with the provisions of Section 15A(b)(6), which require that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The NASD also believes the proposal is consistent with the provisions of Sections 15A(b)(7) and (8). Paragraph (b)(7) permits the sanctioning of members and associated persons by several means, including by imposing fitting sanctions, and paragraph (b)(8) requires that the rules of an association, in general, provide a fair procedure for disciplining members and persons associated with members. The Association believes that the relevant provisions of the Act provide it with authority to issue temporary cease and desist orders. NASD also believes the proposed rules are consistent with the Association's obligations under Sections 15A(b)(2), (6), (7), and (8) because temporary cease and desist orders are fitting sanctions designed to stop violative conduct that is likely to cause significant dissipation or conversion of assets or other significant harm to investors, subject to the specific procedures contained in the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 98–42. Thirteen comments were received in response to NTM–98–48. While three comment letters expressed support for the Association's overall goal of effective regulation of the securities markets, none of the comment letters voiced support for the proposed rule change.

The Board of Directors of NASD Regulation and the National Adjudicatory Council reviewed the Notice of Members and approved its publication. In addition, the Small Firm Advisory Board supported issuing NTM 98–42, although it took no formal position. Finally, a subcommittee of the Legal Advisory Board reviewed and unanimously supported issuing it as well.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. In particular, the Commission solicits comments on (A) whether the scope of possible violations should be narrowed; (B) what impact, if any, the issuance of an NASD temporary cease and desist order will have on other laws (i.e., other than the federal securities laws); and (C) whether the NASD has sufficiently justified the need for temporary cease and desist powers. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street,, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. File Number SR–NASD–98–80 should be included on the subject line if E-mail is used to submit a comment letter. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov). All submission should refer to File No. SR–NASD–98–80 and should be submitted by March 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–34513 Filed 12–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40812; File No. SR–NYSE–98–44]

Self-Regulatory Organizations; Proposed Rule Change by the New York Stock Exchange, Inc. Relating to an Interpretation With Respect to Rule 344 (''Supervisory Analysts'')

December 21, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an interpretation with respect to the meaning and administration of Exchange Rule 344 (''Supervisory Analysts''). Additions are italicized; deletions are bracketed.

Rule 344

/01 *Qualifications*

Supervisory Analyst candidates shall qualify by taking and passing the Supervisory Analyst (Series 16) Examination.

Experience

Appropriate experience for a candidate for Supervisory Analyst [has been defined as] *means* having at least three years prior experience [as a securities analyst] *within the immediately preceding six years involving securities or financial analysis.*

Examples of appropriate experience may include the following:

- *Equity or Fixed Income Research Analyst;*
- *Credit Analyst for a securities rating agency;*
- *Supervising preparation of materials prepared by financial/securities analysts;*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

• *Financial analytical experience gained at banks, insurance companies or other financial institutions;*

• *Academic experience relating to the financial/securities markets/industry.*

/02 No Change

/03 Chartered Financial Analyst (CFA)

Successful completion of the CFA Level I Examination given by the Institute of Chartered Financial Analysts (in lieu of completion of Levels I, II and III for a full CFA designation) will suffice to allow a Supervisory Analyst candidate to [take a special version of the Supervisory Analyst's examination which is limited to Exchange Rules on research standards and related matters] *qualify by taking Part 1 of the Series 16 Qualification Examination.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to set forth an interpretation concerning the meaning and administration of Exchange Rule 344 with respect to establishing standards for the qualification of candidates for Supervisory Analyst designation at member organizations. It is intended that this interpretation will be published as an Interpretation Memorandum for inclusion in the Exchange's Interpretation Handbook.

Exchange Rule 344 sets the standards that must be met by candidates for Supervisory Analyst designation at member organizations. Research reports issued by a member organization must, under the provisions of Rule 472(b) (''Communications with the Public''), be prepared or approved by a Supervisory Analyst.

Rule 344 requires that, to be approved by the Exchange, Supervisory Analysts must provide evidence of ''appropriate experience'' and pass the Supervisory Analyst Examination (the ''Series 16 Examination'') or complete CFA Level I and pass Part I of the Series 16 Exam. The examination consists of two parts: Part I, Regulatory Administration, and Part II, Review of Security Analysis. Currently, the Exchange deems ''three years prior experience as a securities analyst'' as constituting ''appropriate experience.'' The Exchange proposes to amend the existing interpretation to Rule 344 to require Supervisory Analyst candidates to have three years experience, within the most recent six years, involving securities or financial analysis in order to be qualified. Candidates will continue to be required to qualify by taking and passing the Series 16 Examination.

Member organizations have expressed their belief that the current three year securities analyst experience requirement is too limiting in today's business environment where the role of the Supervisory Analyst has changed. Previously, a Supervisory Analyst typically performed actual analysis and wrote reports in addition to supervising the preparation of and reviewing the reports written by others. Currently, it is common for Supervisory Analysts to perform functions limited to the review of research reports written by others. Accordingly, three years experience as a ''securities analyst'' should not be the only acceptable experience that a person may have to be qualified to perform the job function.

Examples of appropriate experience under the proposed revised interpretation include (1) equity or fixed income research analyst; (2) supervisor of preparation of materials by analysts; (3) credit analyst for a securities rating agency; certain financial analytical experience; and (4) certain academic experience. The Exchange believes that this proposed interpretation will appropriately broaden the types of experience that would be acceptable to qualify Supervisory Analyst candidates.

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[3] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations. Pursuant to this statutory obligation, the exchange has developed standards to ensure that persons associated with Exchange members and member organizations as Supervisory Analysts are appropriately qualified and meet experience requirements.

In addition, under Section 6(c)(3)(B) of the Act, the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as are prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has proposed this new interpretation to establish appropriate experience requirements of Supervisory Analyst candidates.

[3] 15 U.S.C. 78f(c)(3)(B).

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NYSE consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No.

SR–NYSE–98–44 and should be submitted by January 20, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–34514 Filed 12–29–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40817; File No. SR–PCX–98–54]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Extension of PCX Specialist Evaluation Program for One Year

December 21, 1998.

I. Introduction

On November 2, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend its specialist evaluation pilot program for an additional year, to January 1, 2000. The Commission published the proposed rule change for comment in the **Federal Register** on November 19, 1998.[3] No comments were received. This order approves the proposal.

II. Description of the Proposal

On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of equity specialists.[4] The filing was intended to establish an overall score and individual passing scores for specialists, replace the ''Bettering the Quote'' criterion with ''Price Improvement,'' and lower the weighting of the ''Specialist Evaluation Questionnaire'' criterion from 15% to 10% so that Price Improvement could be given a weight of 10%. Subsequently, the Commission approved an Exchange proposal to codify the aforementioned changes.[5] The Exchange is requesting a one-year extension of the pilot program. At this time, the Exchange is not seeking to modify the pilot program.

III. Discussion

After careful review, the Commission finds that the PCX's proposal to extend its pilot program is consistent with the requirements of sections 6(b) and 11 of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[7] Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act[8] and Rule 11b-1 thereunder which allow securities exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system.

According to the Exchange, the pilot program is operating successfully and without any problems. The Commission believes it is appropriate to extend the current pilot program for an additional year, until January 1, 2000 so that the Exchange will have an opportunity to continue reviewing and evaluating the program before seeking permanent approval. The Commission notes that the October 29, 1998 report filed by the Exchange indicates that it is reasonably monitoring the effectiveness of the program. The Commission's rationale for approving the extension in December 1997 continues to apply and is incorporated by reference into this order.[9] In addition, the Commission requests that the PCX submit a report to the Commission, by October 30, 1999, containing the information described in the December 1997 order for the first, second and third quarters of 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–98–54) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–34515 Filed 12–29–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 40675 (November 12, 1998), 63 FR 64307.

[4] Securities Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 31, 1997).

[5] Exchange Act Release No. 39976 (May 8, 1998), 63 FR 26834 (May 14, 1998).

[6] 15 U.S.C. 78f(b) and 78k.

[7] In approving this proposed rule change, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78k(b).

[9] *See supra* note 4.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before January 29, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: One Stop Capital Shop Customer Comment Card.

Form No.: N/A.

Frequency: On Occasion.

Description of Respondents: One Stop Capital Shop Customers.

Annual Responses: 1,500.

Annual Burden: 250.

Dated: December 22, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–34509 Filed 12–29–98; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 2950]

Determination on U.S. Bilateral Assistance to the Republika Srpska and Serbia

Pursuant to the authority vested in me by section 570 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in P.L. 105–277 (''FOAA''), I hereby waive the application of Section 570 of the FOAA with regard to the following U.S. bilateral assistance programs:

(1) *In the Republika Srpska:* support for civilian police restructuring; USIA programs promoting democratization, reconciliation, and free and independent media; the Municipal Infrastructure and Services Program of USAID, as well as its Bosnia Business Development, Economic Reform and Democratic Reform Programs; OSCE-supervised elections and human rights activities; and Trade and Development Agency (TDA) activities designed to assist U.S. businesses in Bosnia.

(2) *In Serbia:* USIA- and USAID-funded programs to support democratic reform, including free and independent media and labor in Serbia; USIA- and USAID-funded programs to support humanitarian aid, reconstruction, technical assistance, infrastructure repair, and democratization in the province of Kosovo.

I hereby determine that these U.S. bilateral assistance programs directly support the implementation of the Dayton Agreement and its Annexes.

This Determination shall be published in the **Federal Register**.

Dated: December 16, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–34503 Filed 12–29–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

[Public Notice 2944]

Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee Meeting on Thursday, January 28, 1999, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW, Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas which are assisted by the Department of State and which are attended by dependents of U.S. government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for each attendee. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, SA–29, Room 245, Washington, DC 20522–2902, telephone 703–875–7800, prior to January 17, 1999. Visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting. All attendees must use the C Street entrance to the building.

Dated: December 7, 1998.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 98–34504 Filed 12–29–98; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending December 18, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4916.
Date Filed: December 15, 1998.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0227 dated December 8, 1998 r1–38
Within Europe Expedited Resolutions
Intended effective date: March 1, 1999.

Docket Number: OST–98–4918.
Date Filed: December 15, 1998.
Parties: Members of the International Air Transport Association.
Subject:
PSC/Reso/096 dated December 1, 1998 r1–43
PSC/Minutes/006 dated December 1, 1998—Minutes
Intended effective date: June 1, 1999.

Docket Number: OST–98–4927.
Date Filed: December 16, 1998.
Parties: Members of the International Air Transport Association.
Subject:
COMP Telex Mail Vote 980
Mileage Manual Amendment—Reso 011a
Correction to Mail Vote & Voting Result
Intended effective date: January 15, 1999.

Docket Number: OST–98–4935.
Date Filed: December 18, 1998.
Parties: Members of the International Air Transport Association.
Subject:
PTC3 Telex Mail Vote 981
Japan to Australia Reso 081oo
Intended effective date: April 1, 1999.

Docket Number: OST–98–4936.
Date Filed: December 18, 1998.
Parties: Members of the International Air Transport Association.
Subject:
PTC 23 EUR–SWP 0026 dated November 17, 1998 r1–23
Europe-Southwest Pacific Resos
PTC23 EUR–SWP 0028 dated December 15, 1998—Minutes
PTC23 EUR–SWP 0027 dated December 11, 1998—Correction
PTC23 EUR–SWP Fares 0011 dated December 4, 1998—Tables
Intended effective date: April 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–34474 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending December 18, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures.

Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4912.

Date Filed: December 14, 1998

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: January 11, 1999.

Description: Application of Tahoe Air Corp. pursuant to 49 U.S.C. 41120 and Subpart Q, applies for the issuance of a certificate of public convenience and necessity to authorize it to engage in scheduled interstate and overseas air transportation of persons, property and mail.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–34475 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration (FHWA)

Federal Transit Administration (FTA); Environmental Impact Statements: City of St. Louis and St. Louis County, Missouri

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice of intent to prepare environmental impact statements.

SUMMARY: The FHWA in cooperation with the Federal Transit Administration (FTA) is issuing this notice to advise the public that Environmental Impact Statements (EISs) will be prepared for proposed improvements to the transportation system in the City of St. Louis and St. Louis County, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Don Neumann, Programs Engineer, FHWA Division Office, 209 Adams St., Jefferson City, MO 65101, Telephone: (573) 636–7104 or Ms. Joan Roeseler, Director of Program Development Planning, FTA Region 7, 6301 Rockhill Road, Suite 303, Kansas City MO, 64131, Telephone (816) 523–0204 or Mr. Bob Innis, Transportation Corridor Improvement Group, East-West Gateway Coordinating Council, 10 Stadium Plaza, St. Louis, MO 63102, Telephone (314) 421–4220.

SUPPLEMENTARY INFOMATION: The FHWA and the FTA in cooperation with the East-West Gateway Coordinating Council, the Bi-State Development Agency, and the Missouri Department of Transportation, will prepare Environmental Impact Statements (EISs) for proposed improvements to the transportation system in the Northside, Southside and Daniel Boone study areas in the City of St. Louis and in St. Louis County, Missouri. The transportation improvements are being defined in conjunction with Major Transportation Investment Analyses (MTIAs) for the three study areas. Each MTIA includes the National Environmental Policy Act (NEPA) scoping process, the identification and evaluation of multi-model transportation facility and/or service alternatives, and the selection of a preferred design concept and scope in the study area.

The Northside study area is from St. Louis Central Business District (CBD) to Florissant. The study limits are generally Chouteau Avenue on the south, the Mississippi River on the east, Lindbergh Boulevard on the north and New Florissant Road/Lucas and Hunt Boulevard/Union Boulevard/Kingshighway Boulevard on the west. The Northside study area covers approximately 77 square miles.

The Southside study area is from the St. Louis CBD to Mehlville. The study limits are generally Interstate 64 on the north, the Mississippi River on the east, the Meramec River on the south and Gravois Avenue/Hampton Avenue on the west. The Southside study area covers approximately 84 square miles.

The Daniel Boone study area is from I–170 to Chesterfield. The study limits are generally Page Avenue/the Missouri River on the north, Eatherton Road/Wild Horse Creek Road (Highway CC)/Kehrs Mill Road on the west, north of Manchester Road (Highway 100) on the south and Interstate 170 on the east. The Daniel Boone study area covers approximately 85 square miles.

Improvements to the study areas are considered necessary to provide for a safe and efficient transportation network. Alternatives under consideration include: taking no action; Transportation Demand Management (TDM), Transportation Systems Management (TSM), Busway/High Occupancy Vehicle (HOV), Transit, and Improvements to Existing Roadways, such as, additional travel lanes, interchange improvements and intersection widening.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in these proposals. An interagency scoping meeting will be held on January 22, 1999, from 10:00 a.m. to 12:00 p.m. at the Federal Highway Administration Division Office in Jefferson City, Missouri. Public scoping meetings will be held on January 19, 20, and 21, 1999, between 4:00 p.m. and 8:00 p.m. in the study areas to engage the regional community in the decision making process and to obtain public comment. Subsequent public meetings will be conducted as the studies progress. In addition, public hearings will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed actions and the EIS's should be directed to the FHWA or EWGCC at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultant on Federal programs and activities apply to the program.)

Issued on: December 16, 1998.

Donald L. Neumann,

Programs Engineer, Jefferson City.

Mokhtee Ahmad,

Regional Administrator, FTA Region VII.

[FR Doc. 98–34399 Filed 12–29–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32964 (Sub-No. 1X)]

Wisconsin Central Ltd.—Lease Exemption—Soo Line Railroad Company d/b/a CP Rail System

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Board grants a retroactive exemption from the requirements of 49 U.S.C. 11343–45 covering the lease by Wisconsin Central Ltd. of Tracks No. 17 and 18 of Soo Line Railroad Company d/b/a CP Rail System, located in the Schiller Park, IL intermodal facility, subject to standard labor protective conditions.

DATES: The exemption will be effective January 29, 1999. Petitions to stay must be filed by January 11, 1999. Petitions to reopen must be filed by January 19, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 32964 (Sub-No. 1X) must be sent to: (1) the Surface Transportation

Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; (2) Barry McGrath, 100 Soo Line Building, 105 South 5th Street, Minneapolis, MN 55402; (3) Thomas J. Litwiler, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601; and (4) Francisco J. Ruben, 1050 17th Street, N.W., Suite 210, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA INC., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 21, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–34281 Filed 12–29–98; 8:45 am]

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federal register

Wednesday
December 30, 1998

Part II

National Credit Union Administration

12 CFR Part 701

Organization and Operations of Federal Credit Unions; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The Credit Union Membership Access Act modified NCUA's chartering and field of membership authority. Accordingly, NCUA is finalizing a number of amendments to its policies to update them consistent with the recent legislation.

Additionally, the final rule revises and updates NCUA's chartering and field of membership policy to reflect the advances and changes in chartering requirements since the promulgation of IRPS 94–1. The majority of the revisions reflect NCUA's policy on the types of federal credit union charters and the criteria necessary to amend a credit union's field of membership. The legislation authorizes three types of credit union charters. These charter types include a single occupational or associational common bond, a multiple common bond, or a local community, neighborhood, or rural district serving a well defined area.

Along with a comprehensive update of chartering policy, the format of the chartering manual has been changed to make it more user-friendly. The final rule further clarifies overlap issues, mergers, low-income policies regarding low income charters and service of underserved areas, the definition of immediate family member or household, and the ''once a member, always a member'' policy.

DATES: Effective date: January 1, 1999.

Applicability date: IRPS 99–1 will be applicable January 1, 1999, except for the provisions on the definition of ''local community, neighborhood or rural district, and ''immediate family member or household,'' which will be applicable March 5, 1999, unless disapproved by Congress under the major rule provisions.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: J. Leonard Skiles, Chairman, Field of Membership Task Force, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759, or telephone (512) 231–7900; Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. McLaughlin, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia, or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: In 1982, the changing negative economic environment created safety and soundness concerns that prompted the Board to revise its chartering policy to permit membership in a federal credit union to consist of multiple common bonds, provided each group possessed a common bond. Such membership could be accomplished through the chartering process, through charter amendments, or by way of merger to form a single credit union. This policy change strengthened the federal credit union system by enabling NCUA to merge credit unions that otherwise would have failed because of the loss of a sponsor or other financial or operational downturns. The policy also enabled federal credit unions to diversify their membership and become less dependent on the financial success of one sponsoring company or group. An important advantage of the policy change was that it provided access to credit union service for small groups of people who did not have the resources to charter their own credit unions. The Board issued subsequent changes to the 1982 chartering policy in 1984, 1989, 1994, 1996, and 1998, most of which addressed the multiple common bond policy.

In First National Bank and Trust Co., et al. v. *National Credit Union Administration,* 90 F.3d 525 (D.C. Cir. 1996), the U.S. Court of Appeals for the District of Columbia Circuit invalidated certain select group additions to the field of membership of a North Carolina credit union (the ''Decision''). In that case, the Court ruled that groups with unlike common bonds could not be joined to form a single credit union. Furthermore, in the consolidated cases of *First National Bank and Trust Co., et al.* v. *NCUA* and the *American Bankers Association, et al.* v. *NCUA et al.,* the U.S. District Court issued a nationwide injunction prohibiting federal credit unions from adding new select groups to their fields of membership that did not share a common bond (the ''Order''). The Decision and Order affected the operations of approximately 3,600 multiple common bond federal credit unions serving approximately 158,000 select groups.

On February 25, 1998, the U.S. Supreme Court ruled that NCUA's multiple common bond policy was impermissible under the Federal Credit Union Act (FCUA). *National Credit Union Administration* v. *First National Bank & Trust Co. et al.,* 118 S. Ct. 927 (1998). The Supreme Court affirmed the lower court's finding that groups with unlike common bonds could not be joined to form a single occupational credit union. As a result, Congress addressed the multiple common bond and other field of membership issues and recently enacted legislation reinstating NCUA's multiple common bond policy with some modifications. The Credit Union Membership Access Act (''CUMAA''), Public Law 105–219. CUMAA updated the statutory common bond rules for the first time since 1934.

Accordingly, on August 31, 1998, the Board issued a proposed rule that revised and updated NCUA's chartering and field of membership policies with a sixty day comment period. 62 FR 49164 (September 14, 1998). The policy was issued as proposed IRPS 98–3. Three hundred and sixty-nine comments were received. Comments were received from one hundred and eighty-one federal credit unions, twenty-three state chartered credit unions, thirty state credit union leagues, four national credit union trade associations, two congressmen, seventy-two banks, thirty bank trade associations, twenty credit union members, two law firms, one credit union sponsor, one certified public accountant, one consulting firm, one advocacy group and one other individual. Except for the bank and bank trade associations, most commenters were very supportive of the proposed chartering and field of membership policies, although most commenters suggested ways they would modify the final rule. Except for the section on mergers, the bank and bank trade association comments are summarized in a separate section. Although a separate section is devoted to the comments received from the bankers and bank associations, the issues they raised are addressed throughout the preamble in response to other similar comments.

The comments received were varied and addressed virtually every field of membership issue. All the comments were carefully reviewed, particularly those that expressed concern or that were in opposition to the proposed field of membership provisions, and a response to most of the issues raised is set forth in the section by section analysis of the comments. There were, however, five issues that generated numerous comments and either were confusing or proved somewhat controversial to the commenters. They were: (1) overlaps and exclusionary clauses; (2) economic advisability (the

numerical threshold for member support to charter a new credit union); (3) reasonable proximity and service facility requirements for select group additions to multiple common bond credit unions; (4) voluntary mergers of financially healthy multiple common bond credit unions; and, (5) the definition of immediate family member or household. Accordingly, these five issues are separately addressed in the preamble.

A. Overlaps and Exclusionary Clauses

Occupational and Associational Single Common Bond Credit Unions

The Board proposed that, as a general rule, NCUA will not charter two or more credit unions to serve the same single occupational or associational group. Consequently, the proposal provided overlap protection for single occupational or associational credit unions. However, the Board further proposed that an overlap would be permitted when two or more credit unions are attempting to serve the same group if the overlap's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. This language parallels the statutory requirement for multiple common bond credit unions.

The proposal set forth when NCUA would permit an overlap of an occupational or associational credit union and what NCUA considers in reviewing an overlap. The Board stated that an occupational or associational credit union will rarely, if ever, be protected from overlap by a community charter. The Board also stated that where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from overlap protection. NCUA defines ''broadly stated'' to mean either a statewide field of membership or a field of membership that would not comport with or is inconsistent with federal field of membership policies.

Multiple Common Bond Credit Unions

The Board proposed that NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. The proposed overlap policy restated the statutory requirement for addressing overlap issues affecting multiple common bond credit unions. The proposal also set forth the issues NCUA would consider in reviewing the overlap. In general, if the overlapped credit union did not object, and NCUA determines that there are no safety and soundness problems, the overlap would be permitted. If, however, the overlapped credit union objected to the overlap, a more detailed overlap analysis would be required.

The Board proposed that overlaps between multiple common bond credit unions and community chartered credit unions would be permitted without performing an overlap analysis, since NCUA has determined that, in these types of overlaps, the benefit of the overlap to the member will always outweigh the harm to either credit union. The Board stated that a multiple common bond credit union would rarely, if ever, be protected from overlap by a community charter.

Community Charters

The Board proposed that a credit union seeking a community charter contact all federally insured credit unions with a service facility in the proposed service area. Notwithstanding the requirement to contact all credit unions within the proposed service area, the proposal permitted a community credit union to overlap any other type of credit union charter. The Board stated that a community charter would rarely, if ever, be protected from overlap by a single occupational, single associational or multiple common bond credit union. If safety and soundness concerns existed, the Board proposed providing overlap protection from a community charter for a limited period of time, generally 12 to 24 months.

In the past, exclusionary clauses were permitted for reasons other than for safety and soundness, such as when there was an agreement between the overlapping credit unions. An exclusionary clause, under circumstances other than for safety and soundness, would not be permitted under the proposal if the overlapping credit union was a community charter. The Board requested specific comment as to whether exclusionary clauses are appropriate for community charters and, if so, under what circumstances.

Comments

There were numerous comments on overlaps and how NCUA should address this issue. For example, seventeen commenters objected to overlap protection for any credit union regardless of the reason. Eleven commenters objected to overlap protection, except if the overlap causes significant harm to the existence of another credit union. Five commenters approved of NCUA's proposed policy on overlaps. One commenter stated that overlap procedures should be the same for all types of credit unions. Five commenters recommended overlap protection for small credit unions. One commenter recommended that NCUA carefully review any overlaps of small credit unions. Two commenters recommended overlap protection. Many other commenters suggested different methods of addressing overlap issues.

There were also numerous comments on exclusionary clauses. For example, forty-two commenters suggested that NCUA provide a procedure to allow one credit union to petition to remove existing exclusionary clauses, regardless of charter type. A number of these commenters suggested that exclusionary clauses are almost impossible to police and frustrate the consumer. One commenter stated that NCUA should rarely impose exclusionary clauses. Seven commenters believed the removal of an exclusionary clause should be approved only if both credit unions agreed. Three commenters opposed a process to remove exclusionary clauses. Many other commenters addressed the use of exclusionary clauses.

Three commenters approved of the overlap rules for community charters. Three commenters stated that exclusionary clauses should never be a part of a community charter's field of membership. One commenter stated that exclusionary clauses should rarely be used. Five commenters requested overlap protection from community credit unions. Three commenters requested overlap protection for community credit unions. Three commenters recommended exclusionary clauses for small credit unions that are overlapped by community charters. Three commenters stated that only one credit union should be chartered per community.

Forty-two commenters supported the proposal to provide a process for removing existing exclusionary clauses from community charters. Many of these commenters did not believe that two credit unions should be required to agree to remove the exclusionary clause. Seven commenters believed that an exclusionary clause should be removed only if the two affected credit unions agreed. A number of these commenters suggested that exclusionary clauses are almost impossible to police and frustrate the consumer. Three commenters opposed a process to remove exclusionary clauses.

NCUA Board Analysis and Decision on Overlaps and Exclusionary Clauses

In formulating its opinion on overlaps, NCUA considered not only the comments in response to the current proposal, but also the information gathered in the internal review of the overlap policies permitted under IRPS 94–1 and previous field of membership policies. In the internal review of 58 overlapped credit unions, no long-term adverse financial trends were discovered. The information tended to support the contention that overlaps have not caused any credit union to fail, even though there was, in a limited number of cases, a temporary loss in market share. This finding was consistent with other studies on overlaps, including a recent analysis by the Office of Examination and Insurance on 14 overlapped credit unions where the original recommendation to include an exclusionary clause was not approved by the Board. Overall, the overlapped credit unions did not suffer any harm and reported positive financial trends. Most credit unions experienced an increase in shares, assets, and loans. Delinquency declined and share and loan growth improved. The earlier research was supplemented by a random survey of federally insured credit unions that obtained a response rate of 57 percent. Of the 642 responding credit unions, 284 were overlapped and 34 overlapped other credit unions. In summary, 52 percent of the responding credit unions viewed field of membership overlaps as harmful for credit unions while 48 percent reported overlaps were beneficial. Interestingly, however, when viewed as harmful or beneficial for the credit union members, the opinions were decidedly different. In response to this issue, 82 percent indicated that overlaps benefit members.

The proposed policy on overlaps took into consideration NCUA's experience, the internal review and the survey. The final rule also considered the commenters' opinions. The Board's opinion remains that the overlap policy, as enunciated in the proposal for single occupational and associational credit unions, is supportable and in the best interests of credit unions. In general, credit unions will not be chartered to serve the same common bond group, but incidental overlaps, as defined below, would be permitted. The final rule includes a provision that allows a credit union that has an existing exclusionary clause to petition NCUA to have the exclusionary clause removed.

A decision on whether the clause will be removed will be based on an analysis of the impact of removing the clause on the overlapped credit union.

This same concept adopted for single common bond credit unions also applies to multiple common bond credit unions in that an overlap analysis, except for incidental overlaps, will be required before a group will be added to a credit union's field of membership. This is a statutory requirement. An overlap will not be permitted unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. The final rule includes the same criteria set forth in the proposed rule relative to what the regional director will consider in determining whether an overlap will be permitted.

The final rule, however, clarifies that an overlap analysis will not be required if the group to be added has 200 primary potential members or less. In view of the fact that approximately one-third of the primary potential members join a credit union, the Board believes a group of 200 primary potential members or less will be considered incidental. That is, the benefit to the members will always outweigh the harm to the credit union. Accordingly, a credit union applying to add a group of 200 or less primary potential members will only have to complete the 4015-EZ, which is a shortened version of the standard 4015 (the application for a field of membership amendment). No overlap analysis is required if the group being added is 200 or less.

The overlap policy for community credit unions recognizes the operational difficulty in enforcing exclusionary clauses. Additionally, it recognizes that credit union members will benefit if additional credit union choices are made available. Accordingly, it is the Board's view that community credit unions should be allowed to overlap, with a minor exception for newly chartered single common bond or multiple common bond credit unions, any credit union within the community. Consequently, no overlap analysis will be required for any credit union within a proposed community credit union's well defined area unless it is a newly chartered credit union (chartered less than 2 years). Although the commenters requested a longer time frame for protection from a newly chartered community charter (by way of conversion or a new credit union charter), the Board is only providing protection through the inclusion of an exclusionary clause for a period of 12 to 24 months from the date of the overlapped credit union's charter for a new single common bond or multiple common bond credit union. If safety and soundness concerns exist, the regional director may extend the exclusionary clause protection for a period that does not exceed 60 months from the date the overlapped credit union was chartered. Unlike the proposed rule, no overlap protection will be provided any community charter.

B. Economic Advisability

NCUA's proposed provisions on new charters and charter expansions emphasized that NCUA will evaluate the economic advisability of the proposed institution or expansion as well as its effect on other credit unions. While NCUA did not set a minimum field of membership size for chartering a federal credit union, the Board suggested, based on historical data and evidence of economic viability, that a credit union with fewer than 3,000 primary potential members (e.g., employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than a proposed credit union with a larger field of membership in order to demonstrate that it is economically advisable and that it will have a reasonable chance to succeed. The 3,000 primary potential member threshold number is also operationally consistent with the multiple common bond expansion requirements. The Board specifically requested comments on whether the economic advisability number should be set at a lower or higher level.

Comments

Fifty-one commenters supported the 3,000 primary potential member number as a useful threshold for defining the viability of a new credit union. A few commenters stated that the 3,000 minimum presumption promotes consistency with the statutorily required 3,000 member cap for the addition of a new select group in a multiple common bond credit union. A number of these commenters stated that NCUA should be flexible in determining how many people are necessary to start a new credit union. These commenters suggested that NCUA consider other factors in determining viability such as the ability to obtain adequate capitalization and the level of resources. Fourteen commenters believed the economic advisability number is low and six suggested a number in excess of

5,000 primary potential members as a threshold for viability. A few commenters stated that the 3,000 threshold is almost meaningless in today's economy. These commenters stated that consumers are not going to wait for a credit union to grow to offer financial services.

Twenty-one commenters did not agree with the economic advisability number. Ten commenters believed the economic advisability number is too high. A number of these commenters stated that NCUA should be flexible with any numerical member threshold. A number of commenters further stated that, if a smaller group is financially sound, NCUA should charter the credit union. Conversely, if a larger group is not financially sound, then NCUA should not charter the credit union. One commenter believed the 3,000 threshold may soon become a requirement which will be particularly onerous to the chartering of faith-based credit unions. Some commenters requested that NCUA provide the rationale for choosing the 3,000 number threshold.

NCUA Board Analysis and Decision on Economic Advisability

The Board is adopting the 3,000 primary potential member threshold in the final rule. This position is consistent with congressional intent as well as NCUA experience. This threshold is not intended to undermine the statutory requirement to encourage the formation of new credit unions. Rather, it has been established to provide potential new charters necessary advice and guidance to charter a successful credit union. Any group desiring to form its own credit union will be given every opportunity to demonstrate it has met the economic advisability requirements. Additionally, any group not desiring to charter its own credit union will be reviewed to determine if in fact it can be separately chartered.

IRPS 94–1 established the economic advisability threshold as 500 primary potential members. Notwithstanding this threshold number of 500, the Board's opinion has long been that the 500 primary potential members threshold was extremely low, particularly in view of the fact that only approximately one-third of the primary potential members join. Accordingly, there have been numerous recommendations that the 500 threshold number should be increased.

Since 1996, NCUA has chartered 29 new credit unions. Only one of these new charters had a primary potential membership that was less than 3,000. While there are many factors impacting why the number of new charters since 1996 is low, experience has indicated that one critical factor is the financial service expectation of the potential members. That is, what type of financial service will the new credit union provide? If the financial service is limited, then it will not meet the members' financial service expectations and, as a result, the credit union will not be fully supported. The analysis of whether a new group can form a new credit union must take the members reasonable expectations into consideration. Failure to do so would put the National Credit Union Share Insurance Fund (''NCUSIF'') at risk.

The Board's view is that the 3,000 primary potential membership threshold is an economically advisable number for potential new charters, but not an absolute requirement. This distinction is important. For example, there are approximately 3,100 federal credit unions with primary potential members of less than 3,000. Approximately 700 of those have primary potential members of 500 or less. For the most part, however, at the time of their charter, economic conditions and the financial service expectations of the credit union members were different. These differences provided the credit unions an opportunity to become established and develop a loyalty base under marketplace expectations that significantly differ from those of today. The Board must consider the evolving nature of the financial marketplace. It would be remiss simply to say that, since a lower threshold number worked in the past, there is no need to change the economic advisability number requirement today.

The Board's intent is that every group being added to a multiple common bond credit union should be analyzed to determine whether it has the capability and desire to support an independent operation. Indeed, that is the intent of the legislation. This requirement, however, must be balanced with operational feasibility. To overlook the complexities of providing financial services will only lead to additional supervisory problems. The regulatory approach, therefore, should incorporate known economic factors and the likelihood of success in establishing and managing a new credit union in today's marketplace. To this end, the Board's intent is that a group desiring a separate charter should have every reasonable opportunity to form a new credit union. As stated earlier, the 3,000 primary potential member threshold is not an absolute, but simply a threshold. There are numerous examples where smaller groups can and should have a separate credit union. For example, faith based credit unions, as one commenter suggested, may be uniquely positioned to be separately chartered.

The expectation is that those groups above the threshold of 3,000 primary potential members must be able to demonstrate why they cannot satisfactorily form a separate credit union if they want to be added to another credit union. Statutorily, there is a presumption that, unless certain exceptions apply, a group larger than 3,000 should form its own credit union. That is, the exception criteria will be closely evaluated. Groups below the 3,000 threshold, however, must be able to demonstrate why they can successfully operate a credit union. In other words, the emphasis shifts based on the size of the group. For example, a group of 525 may have more difficulty demonstrating economic advisability than a group of 3,000. This is a balanced approach to the financial service expectations of the members, the intent of Congress that all groups should be analyzed to determine if the formation of a separately chartered credit union is practicable and consistent with economic advisability criteria, and those factors that are historically important in evaluating a new charter applicant from a regulatory standpoint. This is an economically and operationally sound approach to chartering new credit unions. The Board believes it must not only encourage new charters, but also ensure to the fullest extent possible that those groups receiving a separate charter will have a reasonable basis for success and thereby avoid unnecessary risks to the NCUSIF. Accordingly, the field of membership rules on economic advisability must reflect known economic factors and the potential risks to the NCUSIF. It is essential, therefore, that the approval process incorporate the necessary regulatory analysis to make these determinations.

The question was raised concerning the standard that will be used in determining what level of services is adequate in determining the separate charter analysis vis-á-vis an already established credit union. That is, if a new charter can only offer limited services, but an existing charter offers a full service menu, will that fact in of itself be sufficient to determine that a separate charter is not required. One commenter stated that ''the economic advisability does not take into consideration whether the group would be able to have similar services.'' The Board's opinion is that such a standard would circumvent the intent of the statute and, if adopted, the potential for new charters would be drastically

reduced. Except in very rare circumstances, no new credit union charter can offer the same financial services of an established credit union. Accordingly, a similar service criterion cannot be a factor in determining whether a new group will meet that standard. However, if the group is already in the field of membership of a credit union and has been receiving expanded financial services, it is reasonable to consider that factor. This may occur in voluntary merger situations. For that reason, out of fairness to such a group, the failure to provide similar or equal services is more important, but not necessarily dispositive of the issue.

It is also incumbent on the Board to establish rules that are not unnecessarily burdensome. For that reason, it has adopted the presumptive factor of 3,000 in determining what criteria will be applicable. In adopting the 3,000 primary potential member threshold factor, the Board recognizes that newly chartered credit unions in today's financial marketplace have unique challenges. Those groups that can or should be able to meet those challenges, regardless of size, will be required to form a separate credit union unless they meet the common bond requirements. As the legislation directs, the Board will encourage the formation of separately chartered credit unions if it is prudent and economically advisable. Important factors in making this determination, however, are the desire and intent of the group and the sponsor support. In other words, to ignore the group's administrative capability may lead to unnecessary supervisory problems in the future. While the intent of the group and sponsor support cannot be ignored and will carry great weight, they are not the sole factors. The final decision must be based on an independent regulatory analysis in consideration of the remaining factors specified in the regulation.

Four commenters recommended that NCUA include in its definition of economic advisability the statutory language from CUMAA that encourages the formation of separately chartered credit unions ''whenever practicable and consistent with reasonable standards for the safe and sound operation of the credit union.'' 12 U.S.C. 1759(f)(1)(A). The Board agrees with these commenters and has incorporated this change into the final rule in the discussion on multiple common bond charter expansions.

C. Reasonable Proximity and Service Facility Requirements for Select Group Additions

CUMAA reinstated NCUA's multiple common bond policy, as set forth in IRPS 94–1, with significant modifications. A multiple common bond credit union may serve a combination of distinct, definable, occupational and/or associational common bonds. Multiple common bond credit unions can add groups with dissimilar common bonds, which are called select groups. These groups must be within reasonable proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities.

Comments

Twenty-five commenters agreed with NCUA's definition of reasonable proximity, although a number of these commenters stated NCUA should give consideration to accessibility via the internet and home banking.

Six commenters were unsure as to what is meant by ''within the service area'' and questioned how that term will be applied. Ten commenters stated that the reasonable proximity standard should not be applied in a blanket fashion. For example, some of these commenters stated that the distance should be farther in rural areas for the purpose of determining what constitutes reasonable proximity.

Fifty-two commenters disagreed with NCUA's definition of reasonable proximity. Most of these commenters believed it is not necessary, legally or for safety and soundness reasons, since credit unions can automatically and electronically deliver services around the globe. Some commenters stated that NCUA's definition of reasonable proximity goes well beyond congressional intent. These commenters stated that Congress intended that groups be located within a close geographic area to the credit union.

The Board defined a service facility as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition included a credit union owned branch, a shared branch, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition did not include an ATM. Thirty-one commenters agreed with NCUA's definition of service facility. One commenter requested that NCUA specifically state that a mobile branch is a service facility for multiple common bond expansions.

Thirty-one commenters did not approve of NCUA's definition of service facility. Most of these commenters believed that, with the advent of electronic services, a ''brick and mortar'' facility is obsolete. Nineteen commenters requested that ATMs be included as a service facility. Some of these commenters recommended deleting parts of the definition that requires the facility to be a place where deposits are made, loan applications are accepted and funds disbursed. A few commenters stated that NCUA's definition of service facility goes well beyond congressional intent.

NCUA Board Analysis and Decision on Reasonable Proximity

As indicated above, there were numerous comments on the proposed definition of ''reasonable proximity.'' Suggestions ranged from mileage to electronic limitations. Reasonable proximity is an essential factor in determining whether a group can be added to a multiple common bond credit union. The Board's view is that CUMAA and its legislative history sets forth the requirement that reasonable proximity should be a geographic limitation. That is, the group to be added must be within reasonable proximity geographically to the credit union. Therefore, the advantages acquired from advancing technologies do not undermine what the Board considers is the congressionally mandated requirement that the group to be added must be within ''reasonable proximity'' to the credit union.

However, it is not the Board's view that the location of the group must be within reasonable proximity to the main credit union office only. This would be an overly restrictive requirement. Since reasonable proximity is not specifically defined in the legislation, the terms service area and service facility were proposed in an effort to establish the limits of a geographic reasonable proximity. That is, the group to be added must be within the service area of a service facility of the credit union. As specified in the final rule, service facility does not include an ATM. The legislative history of CUMAA is clear that NCUA should not treat ATMs as service facilities for select group expansions. Therefore, the final rule excludes an ATM as a service facility. A service facility will include, however, a credit union owned branch, a shared branch, a mobile branch that goes to the same location on a weekly basis, or a credit union owned electronic facility. Additionally, the Board's view is that an office that is open on a regularly scheduled weekly basis will also qualify as a service facility. This will enhance the development of credit union

services in low income and underserved areas. At a minimum, to qualify as a service facility, the member must be able to deposit funds, apply for a loan, and obtain funds on approved loans.

Past experience with mileage limitations indicates that using distance factors to define reasonable proximity would create numerous inequities. Rural areas obviously differ from urban areas. Small towns differ from large cities. The vast geographic territory combined with the sparse population in the southwest and western mountain areas differ from the rural areas of the east. While mileage limitations often facilitate regulatory decisions, frequently, they are artificial and cause unfair results simply because of small geographic differences. Accordingly, mileage limitations were deemed inappropriate and not advisable. Essentially, the service area means that a member can reasonably access the service facility. In rural areas this may include distances encompassing several counties. In a densely populated area, it may be a portion of a city.

D. Voluntary Mergers of Financially Healthy Multiple Common Bond Credit Unions

The proposal set forth the requirements for the merger into, and by, a multiple common bond credit union. In making the proposal, the Board was mindful of the historic importance of mergers to the financial stability of credit unions and of the importance of credit unions to independently determine what is in the best interests of their members. Often in today's marketplace, membership diversity and growth are essential ingredients to financially strong credit unions. Merging credit unions is crucial to the entire credit union system and helps reduce the risk to the NCUSIF. Generally, credit union officials are best suited to judge when a healthy credit union's membership and financial strength will be enhanced by a merger. In making its proposal, the Board sought to balance these realities against its responsibility to assure mergers are consistent with the statutory requirements of CUMAA and that they do not weaken credit unions or increase the risk to the NCUSIF.

The Board proposed, that generally, the requirements applicable to field of membership expansions apply to a credit union merging into a multiple common bond credit union. That is, if the continuing credit union in a proposed merger is federally chartered and the merging credit union has a select group of 3,000 or more persons (excluding family members), the merger can be approved only if NCUA's expansion requirements are met. If the expansion requirements are not met, this would require a credit union to spin-off a select group of 3,000 or more persons from the merging credit union or the merger could not be approved. In all cases, the individual groups in the merging credit union would have to meet the multiple common bond policies.

Comments

Only one commenter supported the proposed merger process. Sixty-two commenters believed financially healthy multiple common bond credit unions should be permitted to merge without the constraints of the proposed 3,000 limitation approval process. Twenty-two of these commenters stated that CUMAA did not change NCUA's existing merger authority under Section 205(b) of the Federal Credit Union Act (''FCUA'') and that the 3,000 numerical limitations only applies to field of membership expansions and not mergers. Generally, all bank and bank trade organizations opposed the proposal. They argued that CUMAA and its legislative history require that the statutory standards, including the 3,000 numerical limitation, apply whether a single group is being added to a credit union or whether a voluntary merger of a credit union with many groups is being contemplated.

NCUA Board Analysis and Decision on Voluntary Mergers of Multiple Common Bond Credit Unions

In response to the comments raised by credit union trade organizations and bank trade organizations, as well as a further review of the statutory language and legislative history, the Board has decided to amend its proposal. Recognizing the importance of mergers to a stable healthy credit union system, the final rule permits the voluntary merger of healthy multiple common bond credit unions containing select employee groups of less than 3,000 primary potential members without regard to the statutory analysis that is required when non-affiliated groups of less than 3,000 members seek to join an existing credit union. In credit unions seeking to merge containing groups with 3,000 or more members, the provisions of Section 101(d)(2)(A) of CUMAA must be met or the groups in excess of 3,000 will have to be spun off in order for the merger to proceed. All credit unions seeking a voluntary merger will still be required to comply with the requirements of Section 205(b) of the FCUA, 12 U.S.C. 205(b). However, because of statutory requirements, a financially healthy single common bond credit union with a primary potential membership in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

In making this change the Board is mindful of its obligation to be faithful to the statutory language. In doing so, ''the starting point must be the language of the statute itself.'' *Int'l Brotherhood of Electrical Workers* v. *NLRB*, 814 F.2d 697, 710 (D.C. Cir. 1987) (quoting *Lewis* v. *United States*, 445 U.S. 55, 60 (1980). Frequently, the ''best guide to what a statute means is what it says.'' *Stewart* v. *National Shopmen Pension Fund*, 730 F.2d 1552, 1561 (D.C. Cir.) *cert. denied* 469 U.S. 834 (1984) (emphasis in original). Section 101(b)(2) of CUMAA authorizes multiple common bond credit unions. Section 101(d)(1) provides that groups of fewer than 3,000 members can generally be added to a multiple common bond credit union provided certain criteria are met. Section 102 sets forth the statutory criteria that must be met. Taken together, these provisions address the chartering of new multiple common bond credit unions and the addition of non-affiliated groups of less than 3,000 members to existing institutions. Though Congress could have done so, it did not include any language discussing or limiting NCUA's ability to authorize the merger of existing multiple common bond credit unions containing groups with less than 3,000 members.

A merger involves the combination of pre-existing corporations, a process different both legally and practically from the addition of a group to a credit union. Mergers of multiple common bond credit unions after adoption of this rule will involve groups already added to the merging credit unions, either after consideration of the criteria set forth in Section 102 of CUMAA, or through the grandfather provision in Section 101(c). In either case, they would already be contained within the field of membership of an existing multiple common bond credit union. Had Congress expected each such group to be evaluated again in accordance with the criteria set forth in Section 102, it could easily have said so.

Congress next provided two exceptions to the 3,000 member limitation in Sections 101(d)(2)(A) and (B) of CUMAA. The first allows the addition of groups of 3,000 or more members if the Board finds that such a group could not reasonably establish its own credit union because: (1) the group lacks sufficient support to form a credit union; (2) it is unlikely to be successful in establishing and managing a credit

union; and (3) the group would be unlikely to operate a safe and sound credit union.

The next exception contains the first mention of mergers in the statute. Section 101(d)(2)(B) expressly eliminates any restriction on the addition of groups of 3,000 or more if the group is being transferred as part of a merger for safety and soundness reasons. By implication, it is the Board's view that, if there are no safety and soundness concerns, groups of 3,000 or more cannot be included as part of a merger unless the statutory criteria of Section 101(d)(2)(A) are met. The Report of the Committee on Banking and Financial Services supports this conclusion. In discussing the exceptions provided in Section 101(d)(2), the report states ''the Board may merge or consolidate a group with over 3,000 members with another credit union for supervisory reasons. The Committee does not intend for these exceptions to provide broad discretion to the Board to permit larger groups to be incorporated within or merged with other credit unions. The exceptions are intended to apply where the Board has sufficient evidence to support a finding that creation of a separately chartered credit union, or the continued operation of an existing credit union, present safety and soundness concerns.'' H.R. Rep. No. 105–472, 105th Cong., 2nd Sess. 19 (1998). Notably absent from this discussion is any mention of limitations on mergers of credit unions containing groups of less than 3,000 members.

In Section 101(d)(2)(C), Congress created an exception applicable to a limited number of cases where a merger was in process, but not completed, under the NCUA's previous field of membership policy. That policy was enjoined in the litigation that led to the passage of CUMAA. The Board believes this provision was intended as a one time authorization to complete a limited number of in process mergers without regard to the size of the groups in the institutions involved.

Finally, the Board does not believe that Congress' failure to amend Section 205(b)(2)–(3) of the FCUA supports a conclusion that Congress intended no limitation on voluntary mergers of credit unions. Section 205(b) does not provide independent statutory authority to allow mergers, but rather permits the Board to regulate voluntary mergers that are otherwise authorized by law. In contrast, Section 205(h) allows the Board to authorize mergers in emergency situations ''[n]otwithstanding any other provision of law.'' Thus, the Board may regulate and approve mergers under 205(b) only if they do not conflict with the limited restrictions, discussed above, provided by CUMAA's amendments to the FCUA.

The limitation on voluntary mergers applicable to multiple common bond credit unions does not apply to the mergers of single common bond credit unions or community charter mergers. The Board recognizes that the numerical limitation in the voluntary merger rule for multiple common bond charters may, in rare circumstances, encourage a federal credit union to seek a state charter credit union as a merger partner if the state rules are more permissive.

The proposal also clarified requirements for mergers of multiple common bond credit unions for safety and soundness reasons and emergency situations. The numerical limitation would not apply to mergers where there are safety and soundness concerns or the emergency criteria exist. Four commenters requested that NCUA expand the discussion on supervisory mergers. Two commenters recommended that NCUA state that the numerical limitation does not apply for safety and soundness mergers even if the credit union is not insolvent or in danger of insolvency. One commenter stated that, when merging two credit unions for supervisory reasons, nonmember employees of the merging credit union would still be eligible for membership in the continuing credit union. The Board has expanded the discussion on mergers for safety and soundness reasons and has specifically stated that the credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. In a supervisory merger, the continuing credit union is able to serve all of the groups from the discontinuing credit union and not just members of record.

Twelve commenters stated that supervisory mergers and emergency mergers should require all credit unions in the area of the merging credit union to be notified so that they have an opportunity to be considered as a merger partner. One commenter stated that when NCUA is seeking out merger partners for a credit union, it should give credit unions in the same state the right of first refusal. NCUA will attempt to find local merger partners for a credit union that is involved in supervisory or emergency mergers. However, the Board is not requiring notification of all local credit unions. The Board believes such a requirement would be a needless bureaucratic hurdle and cause unnecessary delay. The delay could exacerbate existing problems for the soon to be merged credit union. The Board believes that in such cases it could create losses for the NCUSIF, as well as the credit union that accepts the troubled credit union as a merger partner. However, the Board is reemphasizing that it will expect the regions to look first to local merger partners before considering other credit unions. If the Board is notified that the regions are not conducting the process in this way, the Board may consider a more formalized process.

E. Immediate Family Member or Household

As mandated by CUMAA, the Board is required to define ''immediate family member or household.'' The definition of these terms is designated as a major rule and must be submitted to Congress for approval. Accordingly, the Board proposed to define ''members of their immediate families'' as related persons i.e., blood, marriage, or other recognized family relationships in the same household (under the same roof), or if not in the same household, as a grandparent, parent, spouse, sibling, child, or grandchild. For the purposes of this definition, immediate family member included stepparents, stepchildren, and stepsiblings, and, although not specifically stated, adopted children or any other legally recognized family relationship. The Board also stated that the immediate family member must be related to the credit union member. In other words, once a person becomes a member, then that person's immediate family could join. The proposed definition was controversial and generated numerous comments.

Comments

Thirty-seven commenters generally approved of NCUA's definition of ''immediate family member.'' Seven commenters further stated that it will have a positive effect on a credit union's ability to grow. Five commenters believed NCUA's proposed definition of ''immediate family member'' would have a neutral effect on their credit unions.

One hundred and seven commenters generally disagreed with NCUA's definition of ''immediate family member'' and twenty-three of these commenters further stated that it would have a negative effect on a credit union's ability to grow. Twenty-seven of these commenters stated that a credit union should be able to define ''immediate family members.'' Twenty-six commenters requested that in-laws, aunts, uncles and cousins outside the household be included in the definition of ''immediate family member.'' Fifteen commenters suggested that NCUA define ''immediate family member'' to

include all relatives by blood or marriage. Five commenters suggested that NCUA should limit the definition of ''immediate family member'' to those persons directly related by blood, marriage, or other recognized family relationship. Two commenters requested that any existing immediate family member definition as described in the existing charter of a credit union be grandfathered.

Twenty-four commenters questioned whether adopted children were part of the ''immediate family member'' definition and requested they be included within the definition. Two commenters requested that NCUA specifically state that custodial and guardianship arrangements are encompassed by the ''immediate family'' definition.

Nine commenters requested one definition for immediate family member and one definition for household member. These commenters believed that persons living under the same roof, even if not in the same immediate family, are still eligible for membership. Twenty-one commenters requested domestic partners and other nontraditional family relationships be included in the definition of ''immediate family member.'' Thirty-two commenters asked for clarification on the definition of what is a recognized family relationship. One commenter specifically did not want clarification. A number of commenters requested that the final rule clarify what sources, such as state laws or regulations credit union may use as a reference to determine other family recognized relationships, as well as who does the recognizing—the credit union, the credit union's sponsor, or the state where the credit union is located.

Forty-nine commenters stated that the immediate family member should be able to join, even if the primary member has not joined. Most of these commenters stated that this interpretation is permitted by CUMAA. Thirty-nine commenters requested that credit unions have the ability to adopt a more restrictive definition. Three commenters requested that NCUA provide guidance as to what procedures, if any, credit unions need to follow to conform to the new immediate family member definition.

NCUA Board Analysis and Decision on Immediate Family Member or Household

In initially addressing the issue of immediate family member or household, the Board combined the eligibility requirements for the immediate family and household members into one inclusive definition based on traditional relationships of blood, marriage or other recognized family relationship. Within a household, any person related by blood, marriage or other recognized family relationship would qualify. Outside the household, which included those family relationships not living in the same residence, the Board proposed that the immediate family member relationship would be limited to a spouse, child, sibling, parent, grandparent or grandchild.

The initial proposed definition was narrowly construed by the Board. The Board considered the fact that the statute specifically states that ''[n]o individual shall be eligible for membership in a credit union on the basis of the relationship of the individual to another person who is eligible for membership in the credit union'' unless the individual is ''a member of the immediate family or household.'' For that reason, the Board required that, except for the immediate family member of the primary member, the ability of an immediate family member to join be based on that person's immediate family member having joined, as opposed to simply being eligible to join. In other words, before an immediate family member of a member's child could join, the child would first have to join the credit union.

In proposing the definition of immediate family member, the Board took notice of the fact that Congress intended some limitation of the definition of family member since it defined that term with the qualifier ''immediate.'' Accordingly, an open-ended definition of family member would not be consistent with the statutory language and, therefore, was deemed inappropriate. A definition that included any family member related by blood or marriage was considered unduly expansive. Consequently, the proposed definition followed a more narrow meaning of immediate family member as applied to fields of membership and the common bond concept.

Many commenters, however, took strong issue with the Board's proposed definition and approach to defining immediate family member. In consideration of those comments, the Board is adopting a modified definition which, while being more expansive than the proposed definition, retains the essential requirement that the definition cannot be defined by the credit union. After again reviewing the statutory language, the Board has determined that membership eligibility based on family relationships or household should be segregated and defined separately. The proposed definition of ''immediate family member'' is retained. That is, immediate family member eligibility is limited to a spouse, child, sibling, parent, grandparent or grandchild if not living in the same residence. Stepchildren, stepparents, stepsiblings and adopted children, as previously proposed and intended, are included in this definition. Once an immediate family member joins, then that person's immediate family would be eligible to join.

Household is defined as persons living in the same residence and who maintain a single economic unit. Included in this definition is any person who is a permanent member of and participates in the maintenance of the household. For example, two people sharing an apartment would be considered a household. In turn, the immediate family member of each member of the household who joins could also join because eligibility is then tied to the member. However, a fraternity, sorority, or condominium complex would not be considered a single economic unit. Individual residences in a condominium or apartment complex would qualify as a single economic unit. The definition of household contemplates or intends some permanency and not simply someone who is visiting for a short period. Domestic partners would be included in the household definition, since they share a residence and qualify as a single economic unit, as would anyone who lives in the household and demonstrate a degree of permanency. Legal guardian relationships are considered part of the household definition.

CUMAA does not permit NCUA to grandfather existing definitions or allow credit unions to define ''immediate family or household.'' CUMAA requires NCUA to define ''immediate family or household and although a credit union can adopt a more restrictive definition than NCUA's, it cannot establish a more expansive definition. The flexibility to adopt a more restrictive definition results from potential operational concerns. For example, a sponsor may restrict accessibility to the credit union office located on the sponsor's property.

Unless a federal credit union adopts a more restrictive definition of an ''immediate family or household'' through a board policy, NCUA's definition will automatically apply. That is, absent a board of directors' policy stating otherwise, a credit union may use NCUA's definition without taking any other action. However, a credit union should update its bylaws to

delete its prior definition of immediate family member. The Board believes that its definition of ''immediate family member or household'' is reasonable, and judging from the commenters, more restrictive than the definition used by many credit unions.

The proposal did not explicitly address whether the primary member must first join the credit union before the immediate family member can join. NCUA's intent was that the primary member need not join before the immediate member joins. Thus, the final rule sets forth NCUA's long-standing policy that the immediate family or household member may join the credit union even if the eligible primary member has not joined. However, once the primary member leaves the field of membership, the individual's immediate family or household members are no longer eligible to join through that person.

F. Section-by-Section Analysis

I. Chapter 1 of the Chartering Manual

Chapter 1 set forth the goals of NCUA's chartering policy and the requirements and procedures for chartering a new federal credit union. One commenter stated that NCUA should have an additional goal ''to support the continuing success of existing credit unions.'' The Board is not specifically stating this as a chartering goal since it is already part of NCUA's continuing regulatory mission. One commenter recommended that NCUA state an additional goal to preserve and foster the cooperative nature of credit unions. Likewise, the Board does not need to explicitly state this goal since it is inherently part of the credit union system.

Chapter 1 encouraged the formation of newly chartered federal credit unions and the use of mentor relationships with existing, well-managed credit unions. The Board stated that experienced credit unions are a valuable resource to newly chartered credit unions and can provide needed guidance and assistance. Forty-one commenters expressed support for credit unions mentoring new credit unions. One commenter opposed mentoring relationships. Three commenters stated that NCUA should state that mentoring is not required. Three commenters stated that NCUA should provide incentives for credit unions to engage in mentoring relationships. The Board, in the final regulation, continues to encourage mentoring relationships. However, mentoring is not a regulatory requirement. The main incentive for mentoring is the cooperative nature of credit unions and the social benefit of a healthy credit union system.

On the issue of name selection, the proposal stated that the word ''community'' can only be included in the name of federal credit unions that have been granted a community charter. One commenter opposed this limitation. The Board has revisited this issue and will grandfather existing non-community charters with the word ''community'' in their names. However, to avoid confusion, NCUA will not grant a new charter or a name change with the word ''community'' in the name, unless the credit union is a community charter.

Chapter 1 also set forth the various field of membership designations available to prospective and existing credit unions. These designations included single occupational, single associational, multiple common bond, or community. Four commenters asked how an existing credit union obtains a charter type designation. Two commenters requested that the credit union be allowed to make its own designation. One commenter requested that a credit union not immediately make a designation, but be provided some latitude until its next examination or when it requests a charter amendment. The Board encourages credit unions to review their charters to determine which designation is most appropriate. NCUA will provide a designation for a credit union when the credit union asks for its first charter expansion under this policy, or upon request by the credit union. If a credit union is unsure of its designation it should contact the regional office. If a credit union disagrees with the designation approved by the region, the credit union can appeal the decision to the Board.

Finally, this chapter sets forth NCUA's long-standing policy prohibiting the establishment of a federal credit union for the primary purpose of serving the citizens of a foreign nation. The Board stated that federal credit unions are permitted to serve foreign nationals within the field of membership when they reside or work in the United States and that foreign nationals may also be served if they reside in a foreign country, but only when the primary purpose of the credit union's foreign service facility is to serve United States citizens who are credit union members residing in the foreign country. Five commenters disagreed with this policy. They believe federal credit unions should be able to serve foreign nationals from the United States who are within their field of membership, even if the foreign national has never resided in the United States. The Board finds these comments persuasive. The Board is retaining its policy of limiting branches outside the United States to locations on U.S. military installations or in U.S. embassies. However, the Board believes that a credit union should be able to serve its entire field of membership no matter where the individual resides. Although there is no legal restriction on such service, there are often legitimate safety and soundness concerns when a federal credit union serves foreign nationals outside the United States. For this reason, the Board is requiring that a federal credit union, wishing to serve foreign nationals within its field of membership and who have never resided in the United States, obtain written approval from the regional director. The credit union will address in its business plan the loan quality, collection and collateral policies involving individuals residing outside the United States. If there are safety and soundness concerns, the regional director may restrict the services a federal credit union may provide to foreign nationals residing overseas. If a credit union is currently serving foreign nationals, they can continue such service until the regional director renders a decision. The credit union has 60 days from the effective date of the manual to send in its request to continue to serve foreign nationals.

II. Chapter 2 of the Chartering Manual

Chapter 2 set forth the field of membership requirements for a federal credit union. This chapter was divided into the following comprehensive sections: (1) single occupational charters, (2) single associational charters, (3) multiple common bond charters, and (4) community charters.

Twelve commenters believed that an occupational group and associational group can be included in a single common bond credit union. One of these commenters believed that the final regulation should expressly authorize that individuals with a common employer can rely on that mutuality of outlook to join the same credit union as individuals belonging to an association which is derived from that employment. One commenter stated that the regulation inconsistently uses the term ''group.'' This commenter stated that, since a single common bond credit union consists of one group, then if NCUA is addressing a subset of a common bond group it should refer to that entity as a subgroup. Eight commenters believed that multiple common bond credit unions should be able to have common bond additions for each group in the credit union's field of

membership. For example, the commenters would argue that, if a multiple common bond credit union has an occupational group in New York in its field of membership and wishes to add a division of that occupational group located in California, then the select group criteria do not apply.

The Board believes that a credit union consisting of an occupational group and a closely tied associational group should be treated as a multiple common bond credit union. Any other interpretation would appear to violate the intent of CUMAA which defines a single common bond credit union as ''one group that has a common bond of occupation or association.'' The Board's intent is that any expansion of a multiple common bond credit union must comply with the multiple common bond rules. It is not intended that a group that has a common bond with a group in a multiple common bond credit union can be added based on the common bond rules. The criteria relative to numerical limitation, reasonable proximity, economic advisability, etc., remain applicable when any new group not previously analyzed is requested to be added. For example, an occupational group with a primary potential membership of 1,000 was previously added to a multiple common bond credit union. The credit union now wants to add all the subsidiaries of the occupational group. In order to add the subsidiaries, they must be independently evaluated to determine compliance with the multiple common bond criteria. Finally, multiple common bond credit unions will not be allowed to circumvent the multiple common bond requirements by repeatedly and methodically adding separate groups within the same common bond.

a. Single Occupational Common Bond Credit Union

The Board proposed that a federal credit union may include in a single occupational common bond all persons and entities who share that common bond without regard to geographic location. The Board stated that eligibility for membership in an occupational common bond can be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an occupational common bond of employees of the entity;
- Employment in a corporation or other legal entity with an ownership interest of not less than 10 percent in or by another legal entity makes that person part of an occupational common bond of employees of the two legal entities;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of an occupational common bond of employees of the two entities; or
- Employment or attendance at a school.

Thirteen commenters were satisfied with an ownership interest of 10 percent. Sixteen commenters recommended the ownership interest should be reduced from 10 percent to 5 percent. Six commenters stated that there should be no limits on ownership interest. The Board is retaining the 10 percent ownership interest requirement. There are other federal regulations setting forth 10 percent ownership as a rationale presumption for control of another entity. For example, the Federal Reserve Board presumes that when one company owns 10 percent of the voting securities of a state member bank or bank holding company, the 10 percent ownership constitutes the acquisition of control under the Bank Control Act. 12 CFR Section 225.41(c)(2).

Thirty-three commenters suggested that NCUA's approach to occupational common bond cover other possible relationships among corporations such as franchise relationships. Five commenters opposed including franchisee relationships as part of an occupational common bond. Franchise relationships may be part of an occupational common bond depending on whether there is any contractual or dependency relationship with the occupational group. However, this test is fact specific so NCUA cannot set forth a general rule that all franchises are part of a single occupational group.

Thirty-one commenters recommended that NCUA's approach to common bond include other types of common bonds, such as all schools in an area, or all health care facilities, or public safety employees and one of these commenters stated that these common bond groups be specifically named in the credit union's charter. A majority of these commenters stated that NCUA should be more flexible in defining an occupational common bond. For example, one commenter requested that occupational groups such as electricians, plumbers, and taxicab drivers should be defined as an occupational group. Seven commenters opposed expanding the occupational common bond to include all schools in the area, or all health care facilities or public safety employees. It appeared that a majority of these commenters requested that NCUA establish a policy that was first promulgated in IRPS 96–2. That policy recognized a fourth definition of occupational common bond based on a trade, industry or profession (''TIP'').

In First National Bank and Trust Co., et al. v. *NCUA*, the U.S. Court of Appeals for the District of Columbia Circuit recognized that in some respects NCUA's chartering and field of membership policies may be more restrictive than required by the FCUA. That is, NCUA may identify and approve interpretations that provide broader common bonds than presently permitted. Moreover, given the Court of Appeals determination that the mere element of ''resemblance or common characteristic'' in the definition of groups is the equivalent of a common bond, NCUA clearly has very broad discretion in defining what constitutes a common bond for purposes of federal credit union membership.

CUMAA defines a single common bond credit union as ''one group that has a common bond of occupation or association.'' While the term ''occupation'' is consistent with the Court of Appeals finding, for the purposes of this rule, the Board has decided to again adopt a definition that is more restrictive than that permitted by statute. For the most part, a single occupational credit union is based on employment and any contractual, ownership and dependency relationships to that employment. The decision to not propose a TIP policy is based on operational concerns and the fact that when credit unions were allowed to expand using multiple common bond policies it did not appear that a broader definition was necessary. However, while the Board is not adopting a TIP definition of occupational common bond at this time, the Board's view is that such a policy is legal and may again be proposed after evaluating the impact and effectiveness of the current multiple common bond policy.

One commenter stated that employees and students at a school do not share an occupational common bond. Three commenters stated the occupational common bond for a school should be expanded to include multiple schools. Although the Board believes that employees and students at a school clearly share the same common bond, it does not believe the same is true for multiple schools. Each school is separately organized and chartered and the employees and students at one school may not necessarily share the

same common bond with another school. For example, the employees and students at the University of Buffalo do not share a common bond with the employees and students at the University of Texas. However, employees in schools supervised by the same school district or board of education may share an occupational common bond.

Two commenters requested that a group that has a contractual relationship with an occupational group be considered part of one occupational group. One commenter stated that government contractors of government agencies should be considered part of the occupational common bond. The Board, as stated above, permits contractors to be part of a single occupational common bond provided they have a contractual and strong dependency relationship with the group.

Five commenters requested that the tenants of individual parks, shopping malls and office complexes and their employees should be considered to have a common bond of employment. NCUA cannot define an occupational common bond based on location—it must be based on the statutory requirement of occupation. Therefore, the final rule does not include this type of occupational common bond. However, industrial parks, shopping malls, etc., may qualify as a community charter.

A few commenters questioned whether a single occupational common bond credit union, after adding one new group, could still serve its sponsor group outside the service area. The Board believes the credit union can continue to serve its sponsor group outside the service area. However, the credit union then becomes a multiple common bond credit union and service area requirements apply to any new groups the credit union wishes to add.

A number of commenters objected to providing a geographical description for single occupational common bond credit unions. NCUA has historically provided a geographic definition for single occupational common bond credit unions because more than one credit union may be serving different divisions of the same company. Additionally, overlap concerns, other than incidental overlaps, still must be resolved. While there are no geographical limitations for federal credit unions, a federal credit union must still specify its geographic definition, which can be located throughout the United States.

Occupational Common Bond Amendments. The proposed rule set forth when NCUA would approve an amendment to expand a credit union's field of membership. Specifically, the Board addressed the situation where the sponsor organization is involved in a corporate restructuring. The Board stated that a credit union could continue to provide service to a group that is spun-off only if it otherwise qualifies as part of the single occupational common bond, or if the credit union converts to a multiple common bond credit union. Six commenters stated that, if a business sells or spins off an operating unit or subsidiary, both current and future employees of the operating unit or subsidiary should remain eligible for membership in the occupational credit union without having to convert to a multiple common bond credit union. The Board does not find these comments persuasive. If a company spins off a group that the credit union was serving, the credit union will be able to continue to serve the group if the credit union converts to a multiple common bond charter. If the credit union wishes to expand, it must follow the multiple common bond expansion policies.

The Board set forth a second instance requiring an amendment when the entire field of membership is acquired by another corporation. The credit union can serve the employees of the new corporation, including any subsidiaries of the acquiring corporation, after receiving NCUA approval. The Board stated that, in this instance, the credit union remains a single common bond credit union.

One commenter opposed a conversion process if a single common bond credit union wishes to become a multiple common bond credit union. This commenter believed that, if a credit union added an unlike group to its field of membership the credit union has converted to a multiple common bond credit union. The Board believes that a credit union that wants to serve multiple common bonds should formally convert its charter. Accordingly, the final regulation sets forth this process.

b. Single Associational Common Bond Credit Union

The proposal set forth the definition of associational common bond. The Board stated that an associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. This would permit an associational common bond to include members of the association, groups which are not comprised primarily of natural person members but are members of the association, and employees of the association, as well as the association. The proposal also stated that an associational charter may be granted without regard to the geographic location of the association's members or headquarters. This means a credit union could serve a widely dispersed membership base if NCUA determines that it has the ability to serve the area.

One commenter requested that public housing residents be treated as an associational common bond. Public housing residents, who simply are in the same location, do not meet NCUA's associational common bond requirements. Public housing residents must be part of a bona fide association to be considered an associational group.

The Board also stated that associations based primarily on a client-customer relationship would not meet associational common bond requirements. For example, members of an automobile club, such as the American Automobile Association, which primarily sells services, would not qualify as an associational common bond. The Board is adopting this policy in the final regulation.

The Board further stated that the alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership. One commenter objected to this provision because in some schools the graduates are automatically members of the alumni association. If an alumnus is automatically a member of the alumni association because the individual graduated from that college, then the person is considered part of the associational common bond. However, in most cases, the person must satisfy membership requirements of the alumni association, such as paying dues or participate in alumni activities, to be eligible for credit union membership based on an associational common bond. One commenter stated that an alumni group and a college group share the same associational common bond. The Board disagrees. The interests of the alumni association and the interests of the students at the university are often divergent.

Finally, the Board stated that, if an association subsequently changes its bylaws, the credit union cannot serve the new members of the association until NCUA approves the revised charter and bylaws through a field of membership amendment. The Board is adopting this policy in the final regulation.

Corporate Restructuring. Due to a corporate restructuring of a select group,

a credit union may be required to request an amendment to its field of membership if it wishes to continue to provide service to that group. The Board proposed to permit an associational credit union to continue to serve the group if it was still part of the associational common bond or the credit union converts to a multiple common bond credit union. Three commenters stated that the associational credit union should be able to continue to serve the group regardless of common bond requirements. The Board does not find these comments persuasive. If an association spins off a group that the credit union was serving, the credit union will be able to continue to serve the group if the credit union converts to a multiple common bond charter. If the credit union wishes to expand, it must follow the multiple common bond expansion policies.

One commenter stated that, if an associational common bond spun-off part of the association, the final rule should clarify that relatives of existing members of the credit union belonging to the sold or spun-off group could continue to be eligible for membership in the credit union. Immediate family members of existing credit union members are still eligible for membership even if the group is no longer in the credit union's field of membership provided that the credit union does not further restrict family member eligibility. This rationale has universal application to all charter types.

c. Multiple Common Bond Credit Union

Five Statutory Criteria. Before a credit union can add a new occupational or associational select group, NCUA must determine in writing that five statutory criteria have been met. The first criterion is that the credit union did not engage in any unsafe or unsound practice which is material during the one-year period preceding the filing of the application. The Board defined an unsafe or unsound practice for this criterion to mean any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the NCUSIF. The Board stated that the determination of an unsafe and unsound practice would be decided by the regional director. Two commenters requested further guidance on what is an unsafe and unsound practice. The Board's view is that additional clarification may unduly restrict the regional director's ability to properly ascertain if a safety and soundness concern exists. Obviously, what is a safety and soundness concern for one credit union may not be for another credit union because of a credit union's size, resources, management expertise, etc.

The second criterion is that the credit union is adequately capitalized. The Board defined adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. The Board also specifically requested comment on what criteria should be considered when defining ''adequately capitalized'' for newly chartered credit unions.

Thirty-four commenters stated that they approved of the definition or that requiring a net worth of 6 percent in order to add select groups would not place an unreasonable burden on their credit unions. One commenter stated that there should be no minimum capital adequacy requirements for new or low-income credit unions wishing to expand their charters.

Twenty-five commenters opposed the definition and some of these commenters stated that requiring a net worth of 6 percent would place an unreasonable burden on credit unions. Many of these commenters stated that CUMAA does not require the 6 percent level. Two commenters stated that, if the Board determines that it is necessary to retain the 6 percent capital requirements for group additions then they encourage the Board to consider as part of its economic advisability determination whether the addition will actually raise the credit union's capital. These commenters stated that such an addition should be permitted if the expansion increases capital to at least 6 percent within a reasonable period of time. These commenters also stated that a credit union with a capital of less than 6 percent should be allowed to bring in a group as part of a sanctioned net worth restoration plan. Twelve commenters stated that adding new groups may be the best way for an undercapitalized credit union to obtain an adequate capitalization level. Three commenters stated that NCUA should be flexible in defining adequately capitalized.

In 1982, the Board decided that multiple groups could be joined together through the chartering process, amendment of the charter, or by way of merger to form a single credit union. A major reason for the policy change was to provide small groups of people, who did not have the ability to charter their own credit unions, access to credit union service. Another reason for the policy change was to assist credit unions in diversifying their fields of membership for safety and soundness reasons. The rationale applicable in 1982 remains applicable today. For that reason, the Board included in the final rule for single common bond and community credit unions the possibility that an expansion could be approved notwithstanding the credit union's financial or operational problems.

CUMAA, however, requires a different standard for multiple common bond credit unions in that it requires the credit union to be adequately capitalized before an expansion can be approved. As of June 1998, the average net worth ratio for all federal credit unions was 13.55 percent. Of the 6,907 federal credit unions, 39 percent were above the average and 61 percent were below. More importantly, only 4 percent, or 269 federal credit unions, would not now meet the 6 percent adequate capitalization requirement. It is the Board's view that a 6 percent capitalization for field of membership expansions for multiple common bond credit unions chartered more than 10 years is reasonable and establishes a standard that, while not meeting the average capitalization level of federal credit unions, is indicative of a credit union that generally is managed in a safe and sound manner. Additionally, although not required by CUMAA to set the capitalization level at 6 percent, such a percentage ties to the capitalization level established for prompt corrective action. However, the Board believes that a newly chartered multiple common bond credit union, chartered less than 10 years, or a low-income credit union, may obtain a field of membership expansion even though its capitalization level is less than 6 percent if the credit union, as determined by the regional director, is making reasonable progress toward meeting the 6 percent capitalization level.

The Board believes that a restoration capitalization plan, which was a basis for the 1982 policy and which remains operationally desirable, is not consistent with the statutory requirement in CUMAA that, before an expansion can be granted, the credit union must be adequately capitalized. A capitalization restoration plan, while operationally desirable, could essentially render the statutory requirement that the credit union be adequately capitalized meaningless. A ten-year window to obtain a capitalization level of 6 percent is reasonable, obtainable and consistent with prudent safety and soundness goals.

The third criterion is that the credit union has the administrative capability and the financial resources to serve the proposed group. To determine whether the credit union has met this criterion, the Board stated that it would review

the credit union's most recent examination report or, if necessary, contact the credit union directly. Two commenters stated that there should not be any undue requirement under this criterion for small groups. The Board simply expects a credit union adding new groups, regardless of the size of the group, to demonstrate how it will serve the group. The larger the group, the greater the burden the credit union has to show that it can serve that group. In approving new select groups, the regional director has the discretion in requesting documentation on how well the credit union is serving its current field of membership.

The fourth criterion is that the credit union must demonstrate that any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. The Board stated that the agency will perform an overlap analysis to determine whether this criterion has been met.

Thirty-two commenters believed this test is useful. Most of these commenters believed overlaps help the consumer. Twelve commenters opposed this statutory criteria. Most of these commenters believed overlaps are good for the member. A number of these commenters requested NCUA to base decisions on potential harm on objective criteria. Twelve commenters questioned how the convenience and needs of the members will be quantified and measured. One commenter stated that if the two credit unions agree to the overlap, then NCUA should find no harm to the overlapped credit union. Some of these commenters suggested that a measurement of ''convenience and needs of the members'' should include new or expanded products/services which are not offered by the other credit union as well as increased access to the credit union through fixed service sites, mobile sites, extended service hours and 24 hour electronic media. In response to the comments regarding the measure of the convenience and needs of the members, NCUA will review the products, services and service delivery methods offered by the overlapping credit union. NCUA will measure potential harm to the overlapped credit union as a threat to its solvency. A recent NCUA study determined that overlaps, as a general rule, will not adversely affect the overlapped credit union. Therefore, in most cases, NCUA will probably find that the convenience and needs of the members will outweigh the harm to the overlapped credit union. This suggestion of probability, while not conclusive, is based on experience.

An expanding credit union has the duty to investigate whether an overlap exists. Many of the commenters that opposed the criterion did not believe the credit union should investigate whether an overlap exists. A few commenters suggested that an expanding credit union discharges this duty by asking the group whether it receives services from other credit unions. The Board agrees with these comments. As long as the expanding credit union has, in good faith, documented that the group does not have other credit union service, it will not be penalized if an overlap is discovered at some later time. However, the group may be removed from the expanding credit union's field of membership.

The fifth criterion is that NCUA must determine that the formation of a separate credit union is not practical or does not meet the economic advisability criteria. Four commenters requested more guidance on how to determine whether forming a separate credit union is practical. A few commenters suggested that when evaluating this criterion, NCUA should determine whether the independent credit unions can be full service and offer share drafts, ATM cards, etc. The Board will look at the desire of the group, the services it can provide and its economic advisability before deciding whether to allow a group with under 3,000 primary potential members to join the credit union. If the group does not wish to form its own credit union, does not have the volunteers and resources to charter a credit union, and is otherwise not economically advisable, NCUA will allow the group to join an existing credit union. Although some commenters did not believe this criterion was necessary for groups under 3,000, it is consistent with the statutory language and congressional intent. If the group is 3,000 or more primary potential members, the desire of the group, while important, must be weighed against the statutory criterion that the group cannot feasibly or reasonably establish a single common bond credit union.

One commenter asked whether NCUA has to make a formal determination on all five criteria when adding a group to a credit union's field of membership. Four commenters stated that a written determination is not always required, as in the case of ''successor'' groups. The Board believes it does not have the discretion to waive a written determination. However, in those cases where there is no overlap and the group is small, the written determination should be processed expeditiously. A ''successor'' group would not be treated as a select group expansion, rather it is treated as a housekeeping amendment and, therefore, a written determination is not necessary.

While all federal credit unions are encouraged to expand their service to underserved areas, the Board especially encourages multiple common bond credit unions that add new groups to consider service to underserved areas. The Board believes that multiple common bond credit unions are uniquely positioned, because of their service delivery systems, to provide credit union service to such areas.

3,000 Numerical Limitation. The proposal also set forth the requirements for adding a group in excess of 3,000 primary potential members to a credit union's field of membership. One commenter asked whether it is permissible to add the employees of a sponsor (which has total employees exceeding 3,000) working in a specific geographic area, if the number of employees in that area is less than 3,000 (i.e., can sponsors be segmented to meet the requirement applicable to the number of employees). Two commenters supported NCUA's interpretation of the numerical limitation. One commenter questioned whether the 3,000 number is potential new members or that the group itself has no more than 3,000 total members. The 3,000 numerical limitation is based on the current number of employees or members of the group. Five commenters stated that the wishes of the group and sponsor should be key factors for NCUA to review in making its determination as to whether a group can be added. Although NCUA agrees with these comments that these are key factors, they are not conclusive.

Three commenters opposed the statutory 3,000 numerical limitation. Some commenters requested more specific criteria on when a group of 3,000 or more would be approved as an addition to an existing multiple common bond credit union. The Board believes that such an addition is determined on a case-by-case basis consistent with the statutory requirements. NCUA will look at the size of the group (is the group 100,000 or 3,000), desires of the group, the volunteers and resources to support the efficient and effective operations of the credit union, whether the group meets the economic advisability criteria and the demographics of the group. A few commenters asked whether a letter from the CEO of the company stating that it does not wish to form a new credit union and does not have volunteers and

resources to start a new credit union is sufficient. Although such a letter is persuasive evidence, NCUA will look at the totality of the evidence surrounding the request.

Documentation Requirements. The proposal set forth the documentation requirements to add a select group and NCUA's procedures for amending the field of membership. One commenter believed that NCUA should not require a letter from an authorized representative of the group to be added. This commenter suggested that if the credit union cannot get a letter from an authorized representative that a petition from the group should be acceptable. NCUA agrees and the final rule allows the regional director to accept other documentation as appropriate.

Streamlined Procedures. Seventy-three commenters requested NCUA adopt a streamlined application program for the addition of small employee groups. Two commenters did not support a streamlined approach. Twenty commenters requested that NCUA reinstate the Streamlined Expansion Procedure (SEP). The Board cannot reinstitute SEP because CUMAA requires a written determination by NCUA before a group is added to a credit union's field of membership. Three commenters stated that groups added under SEP be included in the credit union's current charter. The Board agrees and the SEP log will be made part of the official credit union charter.

The Board has developed an expedited process for groups of 200 or less primary potential members. Although a written determination regarding the listed regulatory and statutory criteria is still required, the processing of small groups will be accomplished more expeditiously by the region through the use of the Form 4015–EZ.

Eighteen commenters requested that the regional director respond to multiple common bond expansion requests within a specific time frame. Although the Board is not setting a definitive time frame for rendering a decision, it expects the regions to make a decision expeditiously upon receipt of a completed application.

Distressed Designation. Under IRPS 94–1, a credit union could apply for a distressed designation that eliminated certain field of membership restrictions for the applicant credit union. No credit union ever applied for the designation. Two commenters requested that NCUA reinstitute the distressed designation so that a credit union could add groups regardless of location or common bond. The Board does not believe there is a need for such a policy. Additionally, the Board believes that CUMAA does not provide NCUA with the latitude to institute such a policy.

Corporate Restructuring. Due to a corporate restructuring of a select group, a credit union may be required to request an amendment to its field of membership if it wishes to continue to provide service to that group. The Board proposed to permit a multiple common bond credit union to retain in its field of membership a sold or spun-off group to which it has been providing service, without regard to location, if the original group is clearly identifiable and requests continued service. The Board stated that it views this as a housekeeping amendment and not a field of membership expansion. Eight commenters specifically supported this position. Two commenters stated that the policy should encourage a company to provide a signed letter requesting service but that it doesn't need to be a requirement. Two commenters stated that in a corporate restructuring no new overlap analysis is necessary. The Board agrees with all these comments and will treat such corporate restructuring amendment requests as a housekeeping amendment and no overlap analysis is required. Furthermore, the Board is no longer requiring a letter from the company requesting service. Finally, a name change is not a corporate restructuring, but the credit union should obtain a housekeeping amendment to update its charter.

Branching. Under IRPS 94–1, a credit union could justify a new branch by adding groups within the branch's operational area as long as a significant portion of the total number of persons to be served by the facility when it opened were from the field of membership that existed prior to adding the select groups. Although ''significant portion'' of the field of membership was not defined, the intent behind the policy was not to encourage federal credit unions to establish branches simply for the purpose of adding groups. In practice, NCUA viewed as few as 300 members to be a significant portion of the field of membership for the purpose of branching. NCUA's current proposal does not have any limitations on when and where a credit union could branch. Hypothetically, a multiple common bond credit union could branch in an area where it has no current members. One commenter disagreed with this provision and stated credit unions can only branch where they have existing members. Seven commenters requested that NCUA allow groups to be added to a credit union's field of membership before they even establish a service facility in the area. Although the Board does not have many restrictions on branching, the Board does not agree with these commenters. The Board's view is that CUMAA requires a service facility be established before a credit union adds a group not currently within its service area. Groups cannot be added in anticipation that a service facility will be established. That is, a credit union that intends to expand into a geographical area not currently served by the credit union, must first establish a service facility. Once the service facility is established, then the credit union can add groups that are within the service area of that service facility.

Conversions. The proposal stated that a multiple common bond federal credit union may apply to convert to another type of charter provided the field of membership requirements of the new charter type are met. Groups that do not qualify in the new charter type cannot be served, only members of record from those groups. Furthermore, the Board has established a process for multiple common bond credit unions converting to single common bond credit unions. One such requirement would not permit the credit union to convert to another type of charter, except a community charter, for 3 years after approval, unless the regional director determines that a charter conversion is necessary to resolve safety and soundness concerns. Additionally, the credit union must notify the groups that will no longer be served. This notification requirement also applies to single common bond credit unions converting to community charters. Community credit unions converting to single or multiple common bond charters are exempt from the notification requirements.

One commenter suggested that groups acquired through an emergency merger can continue to be served after the charter is converted. The Board agrees and the final regulation exempts groups or communities that were acquired through an emergency merger or purchase and assumption agreements.

d. Community Charters

CUMAA requires that a community charter be based on ''a well-defined local community, neighborhood, or rural district.'' The Board set forth the following requirements for a community charter:

- The geographic area's boundaries must be clearly defined;
- The charter applicant must establish that the area is a well-defined ''local community, neighborhood, or rural district;'' and
- The residents must have common interests or interact.

The Board proposed that ''well-defined'' means the proposed area has specific geographic boundaries. The Board also stated that a ''local community, neighborhood, or rural district'' encompasses several factors including interaction and/or common interests. Although the proposal did not precisely define interaction or common interests, it did suggest that a greater burden needs to be met when either the geographic size or the population of the area is large. The Board stated that in determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental facilities, local festivals, area newspapers, among others, would be significant indicia of community interaction and/or common interests. Conversely, an area which has numerous trade areas, multiple taxing authorities, or multiple political jurisdictions would tend to diminish the factors that demonstrate the existence of a local community, neighborhood or rural district.

Comments. It was clear that many of the commenters confused the standard community chartering policy with the requirements for a streamlined approach to obtaining a community charter. Thirty-five commenters stated that NCUA's approach to the definition of ''local community'' provides sufficient guidance for credit unions that might be seeking a community charter. Seven commenters specifically approved of the requirement that the residents of the proposed community either interact or have common interests. One commenter requested further standards for interaction. One commenter opposed the interaction and common interest standards. One commenter stated that the interaction requirement does not take into account sparsely populated rural areas. One commenter encouraged the Board to strengthen the language in the final rule that concentrates on interaction and confluence of interest within an area as the most important test of whether the requirements for a community have been met, rather than the size of any particular area. A number of commenters provided suggested definitions for a local community.

Six commenters stated that NCUA's community policy should be flexible for sparsely populated areas. For example, these commenters stated that a rural multiple-county area should be considered a local community. Two commenters stated that the definition needs to be flexible when drawing the boundaries of a well-defined community. A few commenters suggested that the Board should recognize that what constitutes a community in California might be significantly different from what constitutes a community in South Carolina or Alaska.

Thirteen commenters disagreed with NCUA's approach to the definition of ''local community.'' Five commenters stated the definition is too restrictive. Four commenters stated NCUA's definition of local community needs to be more specific. Three commenters stated that large metropolitan cities should be considered as local communities. One commenter stated that a state might qualify as a local community. Two commenters stated that multiple counties should not constitute a local community.

NCUA Board Analysis and Decision on Community Charters. CUMAA modified NCUA's community chartering policy. It requires that a community charter be based on ''a well-defined local community, neighborhood, or rural district.'' Although Congress did not provide specific guidance on what constituted a ''local community, neighborhood or rural district,'' the Board concluded that the addition of the word ''local'' to the previous statutory language was intended as a limiting factor and that additional clarification was required relative to what would qualify as a community charter. The Board further concluded that a more circumspect and restricted approach to chartering community credit unions appeared to be the congressional intent. Accordingly, recognizing that ''local'' was a limiting factor, NCUA staff reviewed those community charter applications approved by the Board in the last three years in an effort to more narrowly define what will constitute a community charter based not only on operational feasibility, but also historical data that tended to support whether a particular well-defined area would qualify as a local community, neighborhood or rural district.

Although the proposal did not completely define interaction or common interests, the Board stated that in determining interaction and/or common interests, a number of factors, are relevant. The Board continues to believe those factors remain valid. These factors are limiting in the sense that they clearly require a community charter applicant proposing to serve multiple trade areas, etc., to demonstrate more definitively how it meets the local requirement. The Board believes that increased documentation requirements need to be met when either the geographic size or the population of the area is large.

The Board stated that, in general, a large population in a small geographic area or a small population in a large geographic area, may meet community chartering requirements. Conversely, the Board stated that a large population in a large geographic area will not normally meet community chartering requirements. In so doing, however, the Board has not summarily dismissed or prejudged any potential application. While an area with a large population may require additional documentation, it still may meet the definition of a local community. Similarly, multiple counties, particularly in rural areas, may qualify for a community charter.

One commenter stated, ''[t]herefore, no geographic size area and no population size is ruled out—all are fair game, subject only to NCUA's discretion. So, effectively, there is *no* geographic or population size limitation for the chartering of community credit unions in the NCUA proposal.'' The commenter correctly interpreted the proposal relative to geographic and size limitations, but failed to acknowledge the overriding requirement that, regardless of the size, the proposed community area must meet the ''local'' standard that Congress directed NCUA to develop. NCUA's responsibility is to review community charter applications to ensure this statutory requirement is satisfied. Accordingly, the Board believes the proposed definition properly incorporates the congressional intent with the need to provide opportunities for community charters. Except for the addition of some clarifying language, the Board is adopting the proposed policy in final.

Two commenters asked if multiple but separate, well-defined areas could comprise a local community charter. This is not statutorily permitted. The entire area must be a single well-defined location. Two, noncontiguous, well-defined areas cannot be the basis for a community charter.

The Board also stated that a low-income area meeting the low-income definition found in Section 701.34 of NCUA's Regulations has many of the common characteristics and demographics of a local community, and generally lacks the basic financial services found in more affluent communities. 12 CFR 701.34. The Board proposed that, when reviewing low-income community charter applications, NCUA's documentation requirements would be more flexible and fewer documentation requirements would be required than for a standard community charter package. There was no significant objection to this provision.

The Board is adopting this proposal in the final regulation.

Presumptive Community. The Board also proposed a streamlined community chartering process for a well-defined local community, neighborhood, or rural district where the area to be served is a recognized political jurisdiction, not greater than a county or its equivalent, and the population of the requested well-defined area does not exceed 300,000. The Board stated that, generally, the single jurisdiction will most often coincide with a county, or its political equivalent. Multiple contiguous smaller political subdivisions within a county or its equivalent, such as a city, township or a school district, would also qualify under this proposal. The Board proposed that for this type of community charter, the applicant must only submit a letter demonstrating how the area meets the indicia for community interaction or common interests. In addition, the applicant would have to provide evidence of the political jurisdiction and size of the population.

The Board further stated that, at its discretion, NCUA may request more documentation demonstrating the area is a well-defined local community, neighborhood, or rural district. If the requested area is not a single political jurisdiction or exceeds 300,000, more detailed documentation would have to be provided to support that the proposed area is a well-defined local community, neighborhood or rural district. The Board also stated that community charters were not limited to a recognized single political jurisdiction, or to a proposed area where the population is 300,000 or less. Simply, additional documentation, as required for standard community charters, would be required if the proposed community charter exceeds an area greater than a county or 300,000 in population. In other words, the definition of local community may include not only those that qualify under the presumptive factor, but also other local well-defined areas meeting the community charter requirements. The Board specifically requested comment as to whether a streamlined approach for community charter approval is appropriate and, if so, in accordance with what criteria.

Comments. As stated earlier, many commenters confused the presumptive community with the standard community chartering policies. Again, a local community is not limited to a single political jurisdiction with a population of 300,000 or less.

Thirty-eight commenters approved of the limited documentation requirements for community charter applications that are within a single political jurisdiction and have 300,000 or less in population. One commenter stated that the size of the population should not matter and that the streamlined procedure should be available for any community charter request that does not exceed a single political jurisdiction not larger than a county or its political equivalent. Nineteen commenters suggested that other types of communities should also have limited documentation requirements, with many of these commenters stating that multiple counties should also be a part of the streamlined documentation requirements. Two commenters stated, that if the community consists of multiple counties, then NCUA should lower the population requirements.

Six commenters suggested a higher population threshold. One commenter suggested that the population size be increased to 500,000. Two commenters suggested that the population size be increased to one million. One commenter stated that the population size should be up to one million and include multiple counties. Six commenters would eliminate any population size. Sixteen commenters generally disapproved of the streamlined approach as proposed. Two of these commenters stated that the population size and political jurisdiction should simply be taken into account when considering the application but should not be the deciding factors. Some commenters were opposed to the 300,000 limit for a streamlined approach either because the number was too large or too small.

One commenter wondered whether it was a concern if the proposed community area was located in two different states. It depends on the facts but, conceptually, a community could cross political jurisdictional boundaries and still qualify for the streamlined approach. For example, a town that is in parts of two counties and has a population 300,000 or less would qualify for the streamlined approach.

NCUA Board Analysis and Decision on Presumptive Community. The NCUA Board is adopting the presumptive community as initially proposed. Additionally, the Board is adopting a second method based on multiple contiguous counties or multiple political subdivisions thereof with a lesser population threshold by which a presumptive community can be established. As to the initial proposal, the Board is limiting the streamlined approach to communities contained in a single political jurisdiction where the population does not exceed 300,000. The Board is not raising the population threshold because experience has demonstrated that a single political jurisdiction of this size, or less, has the normal indicia for community chartering.

Relative to the second method, the Board is also of the opinion that multiple contiguous counties, or multiple political subdivisions thereof, will most likely have the normal indicia for community chartering, particularly in rural localities, if the population of the well defined area does not exceed 200,000. In both instances the presumption is rebuttable, and the regional directors may require additional evidence to support the local community, neighborhood or rural district criteria. The Board may revisit this issue in the future if more experience with larger communities is obtained by NCUA.

In setting forth the example of a ''county'' with a population of 300,000 or less as a presumptive community, the Board was simply providing guidance and setting a maximum geographic limit for the streamlined process. A state or a congressional district would not qualify for a presumptive community. However, for purposes of the streamlined approach, a political jurisdiction that is less than a county would qualify. For example, a municipality or a city would qualify as a single political jurisdiction for the streamlined approach if the population of the municipality or city does not exceed 300,000.

Some commenters asked for NCUA's rationale for establishing the presumptive community at 300,000. The Board's rationale for this number is based on the Board's review of its historical actions in granting community charters. In every case where the community was 300,000 or less and contained in a single political jurisdiction, the Board found that the particular area would qualify as a local community, neighborhood or rural district.

Credit Unions Converting to Community Charters. The Board stated that a credit union converting to a community charter must contact all federally insured credit unions in the area regarding the potential overlap. A few commenters requested that this requirement be eliminated due to the burden placed on the community credit union. The Board agrees, and it is no longer required.

The Board stated that a credit union that converts to a community charter may continue to serve existing members

of the credit union who are not within the community, under the statutory provision that once a person becomes a credit union member, he or she can remain a member. However, the Board stated that a community credit union would not be able to add new members from those groups in the previous field of membership that are outside the community boundaries or add new groups outside the community boundaries. Members of record, outside the community boundaries, could still be served by the community charter. Three commenters approved of NCUA's position. Twenty commenters requested that all groups outside the community boundary should continue to be served by the community credit union. Two commenters requested that, in a conversion to a community charter, NCUA permit the credit union to continue to serve its original sponsor even if the original sponsor is outside the community boundaries. The Board believes that when a credit union converts to a community charter it should serve the community and not select groups. Serving groups outside the community boundaries is not indicative of a community charter. The only exception is for groups obtained through an emergency merger or emergency purchase and assumption. The grandfather provision in CUMAA is not applicable since the credit union has changed its charter type.

The proposed rule on community charters specified that ''[c]ommunity credit unions will be expected to follow, to the fullest extent economically possible, the marketing and/or business plan submitted with their application. The community credit union will be expected to regularly review its business plan as well as membership and loan penetration rates throughout the community to determine if the entire community is being adequately served.'' Four commenters believed this requirement is reasonable. Six commenters stated that, in reviewing a community credit union's business plan, NCUA should consider the credit union's good faith efforts to comply with its plan and not just focus on the extent to which the credit union is achieving the plan. Thirteen commenters strongly objected to the inclusion of this language, particularly the reference to membership and loan penetration rates. It is their position that the language would impose Community Reinvestment Act (CRA) standards, and that Congress clearly has had no such intent. When this language was first developed in 1997, it was not the intent to impose CRA standards. The intent was to simply outline the expectation that community charters are chartered to serve the entire community, just like any other charter type should attempt to serve their field of membership, and not a portion of the approved well-defined area, and that the business plans should reflect this goal. That is the nature of a community charter. Finally, with respect to the proposed language, it was never intended that additional examination or supervisory controls would be required. At the time this language was under consideration, there was considerable evidence that the number of community charter applications would increase due to the adverse court rulings. Again, the objective was to reiterate that community charters should make every effort to serve the community, and not just those groups already in the converting credit union's field of membership. However, to further clarify the Board's position, the Board has modified the language to read as follows: ''Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.''

Mergers. The proposal stated that a community credit union cannot merge into a multiple common bond credit union except in an emergency merger. Three commenters stated that a community charter should be allowed to merge with a multiple common bond credit union. It remains the Board's view that community charters should not be allowed to merge into multiple common bond charters, absent emergency merger criteria. If a multiple common bond credit union merges into a community charter, the community charter may only serve new members of groups that are located within the community charter boundaries. Of course, the continuing credit union can retain members of record under the ''once a member, always a member'' policy.

Applications In Process. The Board has determined that all community charter applications that were submitted prior to August 7, 1998, and are still outstanding, must be finally submitted with all required documentation to the regions by June 30, 1999, in order to be processed pursuant to the community policies set forth in IRPS 94–1. If a completed community charter application package is not received by the regions by June 30, 1999, then it will be necessary to process the application consistent with IRPS 99–1.

e. Changes Applicable to All Federal Credit Unions

Removal of Groups. The proposal set forth the procedures for a credit union, with NCUA approval, to remove groups from a credit union's field of membership. One commenter stated that this section needed to be clarified so that, if a group is removed from a credit union's field of membership, current members retain membership. The Board agrees. If a group is removed from a credit union's field of membership, current members retain membership under the ''once a member, always a member'' policy. This rationale applies to all charter types.

Appeal Procedures. The regulation sets forth certain appeal procedures. Unless the credit union is requesting reconsideration, it has 60 days to appeal a denial. One commenter requested 90 days to appeal and 60 days to provide supplemental information in a reconsideration. Two commenters asked how long NCUA has to respond to an appeal and one of these commenters stated that the appeal process favors NCUA.

The Board believes that a 60-day time frame gives the credit union sufficient time to appeal the region's determination. The Board's recent experience leads it to believe flexibility is necessary in deciding appeals. Although the appealing credit union may want an expeditious decision, most importantly, it wants a correct decision. The Board, therefore, is not setting a definitive time frame for rendering a decision on appeal, but will attempt to notify the appellant any time a decision cannot be reached within 90 days. The Board is cognizant of the need for an appellant to receive a decision as soon as reasonably possible. Accordingly, every effort will be made to expeditiously process and consider all appeals.

In general, credit unions can appeal adverse decisions by the regional director, including decisions regarding exclusionary clauses. Except for this modification regarding exclusionary clauses, the Board is adopting the proposal in final.

Emergency Mergers. The Board issued clarifying language regarding emergency mergers and purchase and assumption agreements for occupational, associational and community charters. Among other minor modifications, the Board proposed to remove the 12 month period within which insolvency must occur, since it is not required by the FCUA. One commenter approved of this entire provision. One commenter approved of the removal of the 12

month insolvency period. One commenter requested that a multiple common bond or single common bond credit union that takes in a community area as the result of an emergency merger or purchase and assumption should be able to expand the community portion of its charter. The Board disagrees with this suggestion and is adopting a policy that community fields of membership acquired through emergency mergers cannot be the basis of an expansion since the character of the acquiring credit union has not changed. The Board is adopting the proposed emergency merger provisions in final and would like to emphasize that, in the coming year, consistent with legal advice, credit unions not making acceptable progress in becoming Y2K compliant may be determined to have serious and persistent operational problems requiring expeditious action.

Once a Member Always a Member. CUMAA permits any person or organization, who is a member of any federal credit union at the date of enactment, unless expelled under Section 118 of the FCUA, to maintain membership in the credit union. This provision codifies the ''once a member, always a member'' policy. The Act also permits a member, or subsequent new member, of any group whose members constituted a portion of the membership of any federal credit union at the date of enactment, to continue to be eligible for membership in the credit union. For example, an employee of a select group who was eligible for membership prior to August 7, 1998, but did not join the credit union, is still eligible to join the credit union. This also applies to new employees hired subsequent to the date of enactment. Twelve commenters approved of the ''once a member, always a member'' policy.

Twenty-five commenters disapproved of the proposed ''once a member, always a member'' policy. Several commenters discussed the practice of some larger corporations, which provide sizable support for their employee's credit union, and view membership in the credit union as a company benefit. In other words, if an employee leaves the employ of the company, the credit union also terminates the individual's membership. These commenters believed CUMAA would allow continuation of this practice. The observation was made that a credit union should be able to divest members that have left the employment of the sponsor if that is what the sponsor desires. The Board does not concur with this observation. The Board's view is that Congress established a permanent membership relationship with the credit union, and unless a member is expelled under the provisions of Section 118 in this Act, membership cannot be unilaterally terminated by the credit union. However, the commenters raise a legitimate operational concern. To address this issue, the Board determined that a credit union can limit the services to members in those situations where membership would conflict with sponsor policy and who are no longer in the field of membership. While membership is retained, the delivery of member services can be qualified. It is anticipated that this approach will adequately address the problem.

Grandfather Provision. Section 101 of CUMAA established that membership is grandfathered for persons: (1) in a single common bond credit union; and (2) in groups comprising multiple common bond credit unions as of the time of passage of the Act. It also indicates, that where the groups comprising either the single or multiple common bond credit unions are defined by any particular organization or business entity, the grandfather provisions will ''continue to apply with respect to any successor to the organization or entity.'' One commenter stated that the final rule should state that successors are automatically grandfathered and the statutory mandate is self-executing. The Board does not believe that this provision is self-executing. The regional director must still approve the housekeeping amendment in the charter. Except for documentation from the credit union explaining the new organizational structure, no further documentation will be required. However, for credit unions undergoing a charter conversion, once the charter type is converted, the protection provided by the grandfather provision no longer applies.

III. Chapter 3 of the Chartering Manual

The Board proposed a separate chapter setting forth special policies for low-income credit unions and special chartering policies for underserved areas. The Board's intent was to encourage the formation of new credit unions and the expansion of existing credit unions into underserved and low-income areas.

One commenter supported NCUA's proposals concerning the chartering of low-income credit unions. One commenter requested a new definition of low-income credit unions. The Board believes the current definition of low-income is satisfactory.

CUMAA authorizes credit union service to people of modest means. This is particularly evident with the addition of underserved areas to the field of membership of a federal credit union with the approval of NCUA. The legislation defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. A credit union adding an underserved area must establish a service facility in the area.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area where the unemployment rate is at least 1.5 times the national average and the area has significant unmet needs for loans or equity investments;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent and the area has significant unmet needs for loans or equity investments.

Three commenters completely supported the proposal. One commenter supported NCUA's definition of an underserved area. Three commenters objected to placing a service facility in an underserved area that is added to the credit union's field of membership. The definition of an underserved area and the service facility requirement are statutory and are incorporated into the

final rule. A few commenters requested that an ATM be treated as a service facility. The legislative history of CUMAA clearly indicates that for this provision an ATM is not a service facility.

Two commenters believed NCUA should define service facility in this section to include a credit union's commitment to regular hours on a periodic basis at a local facility, such as a church or community center. The Board agrees with this comment and has incorporated it into the final regulation. One commenter requested that the Board provide an example of an area having ''significant unmet needs for loans or equity investments.'' An example of ''significant unmet needs for loans or equity investments'' is an area where there are few financial institutions or a high ratio of residents in relation to traditional financial institutions.

Although the new legislation specifically authorizes flexible policies regarding multiple common bond credit unions providing service to underserved areas, the Board has determined that previous agency policies allowing similar service to poor and disadvantaged areas should continue. Accordingly, the Board stated that the criteria established for multiple common bond credit unions would also apply to single occupational, single associational, and community credit unions desiring to serve underserved areas. Thirteen commenters approved of NCUA's decision to allow all types of credit union's to serve underserved areas. The proposal has been adopted in the final regulation.

The proposal stated that federal credit unions adding the underserved community must first develop a business plan on how it will serve the community and that NCUA would require periodic reviews on how the credit union is serving the community. Four commenters stated that to encourage credit unions to add underserved areas to their field of membership, NCUA should avoid requiring burdensome reporting requirements to credit unions attempting to service the ''underserved.'' These commenters stated that requiring loan penetration rate and other community statistical information may discourage credit unions from pursuing that important sector of the market. The Board agrees. However, the Board believes it is necessary first to have a business plan to address how financial services will be provided to an underserved areas. Although not required by regulation, the regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area being met as well as requiring reports before NCUA allows a federal credit union to add an additional underserved area. Although one commenter requested public hearings before adding an underserved area, the Board believes such a requirement will simply add another bureaucratic hurdle and impede service to the underserved.

One commenter questioned why a credit union that adds an underserved area cannot participate in the Community Development Revolving Loan Program (CDRLP). One commenter requested that the final rule state that a credit union that adds an underserved area cannot participate in the CDRLP. One commenter suggested that providing service to an underserved area does not equate to a low-income designation. Only a credit union with a low-income designation may participate in the CDRLP under NCUA Regulations and the FCUA. If a credit union that adds an underserved area qualifies for a low-income designation, it may apply for the designation and be entitled to the benefits of the CDRLP, and the Board encourages eligible credit unions to do so.

Chapter 3 also permitted any multiple common bond credit union to add a low-income association to its field of membership, if all members of the association meet NCUA's definition of low-income. One commenter stated that NCUA should not require that all members of this type of association be low-income. The Board disagrees with this comment. Because a low-income association has limited common bond requirements, changing its membership criteria may invite abuse and vitiate the Board's intent to allow credit unions to serve low-income people.

IV. Chapter 4 of the Chartering Manual

This chapter discusses the requirements and procedures for conversion of a state credit union to a federal credit union and conversion of a federal credit union to a state credit union. The proposed policy for charter conversions was basically the same as current policy. The major change concerned changing the credit union's name on all signs, records, accounts, investments, stationery and other documents. The proposal allowed credit unions to have 180 days from the effective date of the conversion to change its signage and promotional material. The credit union would be able to reissue, with its new name, its outstanding debit cards, ATM cards, credit cards, at the time of renewal. Share drafts with the credit union's name could be used by the member until depleted. This proposal would apply to both types of conversions, state-to-federal and federal-to-state. Under the proposal, if the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance and a federal name, including checks and credit cards.

Four commenters supported all of the provisions in this chapter. One commenter requested a one year time frame to convert signage, promotional materials, etc. One commenter requested that the regional director have the authority to extend the time frame. The Board believes the current time frames are adequate but has provided the regional director with the discretion to extend the time frame for an additional 180 days.

One commenter requested NCUA to exempt converting state credit unions, whose fields of membership do not conform to federal standards, from compliance with NCUA's community charter requirements. The Board believes that this is not permitted under CUMAA. One commenter stated that a state charter converting to a federal charter should be able to continue to serve all of its existing members under the ''once a member, always a member'' policy. The Board agrees with this commenter and a credit union converting to a federal charter can continue to serve members of record after the date of conversion.

One commenter stated that this section should address conversion to a thrift or bank and provide citations to that information. Thrift and bank conversions are addressed in Section 708a of NCUA's Regulations. 12 CFR 708a.

V. Glossary

Three commenters commended NCUA for removing the definition of ''secondary member'' from the glossary. The Board has decided that there is no longer a need for this term and it will not be included in the glossary of the final manual. Nine commenters recommended NCUA also remove the definition of ''primary member'' from the glossary and any other references to it in the final regulation. The Board believes the term ''primary potential member'' is useful when addressing the issue of economic advisability and select group additions and, therefore, is not deleting the reference.

VI. Effective Date

One commenter requested that the manual be made effective six months after publication so that credit unions would have an equitable opportunity to apply for select group expansions, instead of a first-come, first serve approach. The Board is establishing January 1, 1999, as the effective date for this regulation, except for the definitions of ''immediate family member or household'' and ''well-defined local community, neighborhood or rural district,'' which Congress has designated as major rules. The major rules are effective March 5, 1999. The law contemplates an effective date at least 60 days after publication or submission to Congress for major rule provisions. This serves the public interest by providing all parties, including Congress, an opportunity to review and analyze these provisions prior to their effective date. The Board believes that credit unions are continuing to be harmed by the inability to add new groups and any benefit of delaying the effective date is outweighed by the harm to credit unions. Accordingly, the Board for good cause, finds that pursuant to 5 U.S.C. 553(d)(3) the rule shall be effective on January 1, 1999 and without 30 days advance notice of publication.

VII. General Comments on the Format of the Manual

The Board believed the new format of the manual would be more user-friendly by making information easier to locate. Ten commenters stated that the format of the manual is better and easier to read. Three commenters commended NCUA for a well written proposal. Two commenters commended NCUA for the comprehensiveness and clarity of the proposal. A few commenters recommended consolidating parts of the manual. Two commenters believed the format was difficult to use and recommended a revision. A frequent criticism of the previous chartering manual was that it was difficult to locate information quickly about a particular topic as it related to the different types of charters. To eliminate this problem and to ensure that each section was ''self contained,'' the manual segregates each type of charter into sections and addresses all the various issues that may affect that charter type. In so doing, some of the information applicable to all types of charters is repeated in the different sections. Naturally, in repeating similar information, the actual length of the manual is increased.

However, for the general public or the casual user, it makes for a more user-friendly document and facilitates research on the various types of charters.

VIII. Miscellaneous Comments

There were several comments received that did not directly address specific issues in the manual. One commenter questioned whether NCUA will change charters that do not meet the requirements of this proposal. NCUA will not apply this regulation retroactively. CUMAA grandfathered current credit union members and groups. However, NCUA encourages credit unions to examine and update their charters because it will be important for future credit union expansions or mergers. It is always important for a credit union to maintain an accurate and updated charter to ensure that it serve all eligible groups.

Two commenters are concerned that the proposed manual does not include any specific enforcement provisions, examination procedures or language that addresses the remedies for interested parties in the event that a credit union allegedly fails to adhere to the provisions of the manual. The Board believes that the normal examination procedures should be used to ensure compliance with the regulation. If a violation is discovered and cannot be handled at the regional level, appropriate enforcement actions as set forth in NCUA's Regulations and the FCUA will be initiated by the Board.

Two commenters requested that NCUA set forth procedures for chartering a credit union for the primary purpose of making business loans. A new credit union that wishes to be chartered for this purpose will have it included in its charter if the regional director agrees that the credit union can carry out that objective.

As a general observation, IRPS 99–1 applies only to federal credit unions, unless otherwise specified.

IX. Comments From Banks and Bank Trade Organizations

Briefly summarized, the bank commenters argued that NCUA did not interpret CUMAA correctly and that federal credit unions should be subject to taxation like banks. In general, these commenters opposed the definition of occupational common bond, reasonable proximity, service facility, local community, the streamlined approach for community charters with populations of 300,000 or less in a single political jurisdiction, capital adequacy and the definition of low-income credit unions. Some of these commenters supported NCUA's definition of ''immediate family members'' while others opposed it. Most of the commenters believe NCUA's definitions and standards are vague and lack clarity. In general these commenters argued that the proposal defeats the concept of ''meaningful affinity'' found in CUMAA.

The Board has considered all issues raised by these commenters and has previously addressed the major issues in this preamble since other commenters also opposed many of the same provisions. As to the question of taxation, this issue was legislatively addressed in CUMAA at Section 2.(4), which states that ''[c]redit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes. . . .''

Finally, many of the commenters stated that the proposed regulation does nothing to encourage the formation of separate credit unions to serve groups of fewer than 3,000 persons. The Board strongly disagrees with this comment. In fact, it is the Board's intent that any group that can meet the economic advisability requirements, should form its own credit union. The Board has simply established criteria that provides guidance based on historical experience relative to those groups that may have the best opportunity to succeed. Every effort will be made to encourage new charters, but operational feasibility and requirements are valid factors and cannot be ignored in the decision making process.

G. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The final rule will not have a significant economic impact on a substantial number of small credit unions and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has previously determined that several requirements of this final rule constitute collections of information under the Paperwork Reduction Act. The requirements are that federal credit unions: (1) complete a charter application or conversion application; and (2) provide written requests for changes in a credit union's field of membership. These documents are necessary to ensure the safety and soundness of credit unions as well as

ensuring that the legal requirements of the Act have been met. Other aspects of this final rule reduce the paperwork requirements from the current rule.

It is NCUA's view that some aspects of the time it takes a credit union to complete a charter application, charter amendment, or a community conversion or expansion application is not a burden created by this regulation but is the usual and customary practice in the normal operations of a business entity. However, NCUA estimated that it should take a credit union an average of 80 hours to develop a written charter or conversion request. NCUA estimates that it will receive 80 charter or conversion requests in any given year. The annual reporting burden would be 6,400 hours to comply with this requirement. NCUA also estimates that it should take a credit union an average of two hours to provide a written request for changes in a credit union's field of membership. NCUA estimates that it will receive 9,000 of these requests in any given year. The annual reporting burden would be 18,000 hours to comply with this requirement. The total annual burden hours imposed by the proposed rule is 24,400 hours. Two commenters stated that the average of 80 hours to develop a charter conversion package was an insufficient amount of time. The commenters seem to confuse paperwork requirements with oral communications between the credit union and the region. The Board disagrees with the commenters' analysis and believes, on average, this time is sufficient. Furthermore, the Board believes the number of community charter conversions requests and select group expansion request is an accurate estimation.

The reporting requirements in IRPS 99–1 have been submitted to the Office of Management and Budget for approval and the OMB number will be published as soon as it received by NCUA. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number will be displayed in the table at 12 CFR 795.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. This final rule makes no significant changes with respect to state credit unions and therefore, will not materially affect state interests.

Congressional Review

Congress, by statute, has determined that NCUA's definition of ''immediate family or household'' as well as NCUA's definition of a ''well-defined local community, neighborhood, or rural district,'' shall be treated as a major rule for purposes of chapter 8 of title 5 United States Code. OMB has determined that the remaining provisions of IRPS 99–1 do not constitute a major rule.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on December 17, and December 22, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 12 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy. Copies may be obtained by contacting NCUA at the address found in § 790.2 of this chapter. The IRPS is incorporated into this section. (Approved by the Office of Management and Budget under control number 3133–0015.)

IRPS 99–1—[Added]

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 99–1) does not appear in the Code of Federal Regulations.

3. IRPS 99–1 is added to read as follows:

CHAPTER 1—FEDERAL CREDIT UNION CHARTERING

I—Goals of NCUA Chartering Policy

The National Credit Union Administration's (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common bond or the community represents a well-defined local community, neighborhood, or rural district;
- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Unless otherwise noted, the policies outlined in this manual apply only to federal credit unions.

II—Types of Charters

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

III—Subscribers

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the ''subscribers''—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability, which is a determination that a potential charter will have a reasonable opportunity to succeed, is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) the character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good ''general character and fitness.'' Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

IV.C—Member Support

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

NCUA has not set a minimum field of membership size for chartering a federal credit union. Consequently, groups of any size may apply for a credit union charter and be approved if they demonstrate economic advisability. However, it is important to note, that often the size of the group is indicative of the potential for success. For that reason, a charter application with fewer than 3,000 primary potential members (e.g., employees of a corporation or members of an association) may not be economically advisable. This is particularly true for groups of 200 or less primary potential members. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than an applicant with a larger field of membership. For example, a small occupational or associational group may be required to demonstrate a commitment for long-term support from the sponsor.

IV.D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and to adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- Identify any overlapped credit unions (discussed in Chapter 2). This does not apply to community charter applicants;
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Continuity plan for directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping and data processing system;
- Detailed semiannual pro forma financial statements (balance sheet,

income and expense projections) for 1st and 2nd year, including assumptions—e.g., loan and dividend rates;

- Plans for operating independently;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

V—Steps in Organizing a Federal Credit Union

V.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and the organizer is satisfied the application has merit, the organizer should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

V.B—Charter Application Documentation

V.B.1—General

As discussed previously in this Chapter, the organizer of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possesses an appropriate common bond or the geographical area to be served is a well-defined local community, neighborhood, or rural district;
- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizer must submit the following forms, which are available in Appendix D of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement to Serve, NCUA 4012;
- Application and Agreements for Insurance of Accounts, NCUA 9500; and
- Certification of Resolutions, NCUA 9501.
- Each of these forms is described in more detail in the following sections.

V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the reverse side of the form.

V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

V.B.4—Report of Official and Agreement to Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizer must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

V.B.5—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and recording officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

VI—Name Selection

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

- Is not already being officially used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be ''Federal Credit Union.''

The word ''community,'' while not required, can only be included in the name of federal credit unions that have been granted a community charter.

VII—NCUA Review

VII.A—General

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent

to the organizer. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience and the suitability and commitment of the proposed officials and employees, and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

Credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizer and subscribers to reduce the likelihood of delays in the chartering process.

The staff member will analyze the prospective credit union's business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizer and discussed with the prospective credit union's officials. Additional on-site contacts by NCUA staff may be necessary. The organizer and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in Appendix B.

VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizer will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the charter application is again denied, the group may proceed with the appeal process within 60 days of the date of the last denial.

VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in Appendix E.

All new federal credit unions are also encouraged to establish a mentor relationship with a knowledgeable, experienced credit union individual or an existing, well-operated credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight review. Upon request, NCUA will provide assistance in finding a qualified mentor.

VIII—Future Supervision

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it does not pose undue risk to the NCUSIF. The examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

IX—Corporate Federal Credit Unions

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of Corporate Credit Unions.

X—Groups Seeking Credit Union Service

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

XI—Field of Membership Designations

NCUA will designate a credit union based on the following criteria:

Single Occupational: If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union.

Single Associational: If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will

be designated as an associational credit union.

Multiple Common Bond: If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple common bond credit union.

Community: All community credit unions will be designated as such, followed by a description of their geographic boundaries (e.g. city or county).

Credit unions desiring to confirm or submit an application to change their designations should contact the appropriate NCUA regional office.

XII—Serving Foreign Nationals

Federal credit unions are permitted to serve foreign nationals within their field of membership wherever they reside provided they have the ability, resources, and management expertise to serve such persons. Before a credit union serves foreign nationals outside the United States it must submit a business plan and must have prior written approval of the regional director. The business plan must explain in detail the types of loan products that will be offered and any written policies regarding collection and collateral involving loans to foreign nationals residing overseas and any written restrictions regarding loan repayment if a foreign national leaves the field of membership. If safety and soundness concerns exist, the regional director may limit a federal credit union's ability to offer specific types of services to foreign nationals living overseas that are within the credit union's field of membership.

A federal credit union can only establish a service facility outside the United States as long as the service facility is located on a United States military installation or United States embassy. NCUA policy prohibits the establishment of a federal credit union on foreign soil for the primary purpose of serving the citizens of a foreign nation.

CHAPTER 2—FIELD OF MEMBERSHIP REQUIREMENTS FOR FEDERAL CREDIT UNIONS

I—Introduction

I.A.1—General

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group which has a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules which are fully discussed in the following sections of this Chapter may apply to each.

I.A.2—Special Low-Income Rules

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is ''to serve the productive and provident credit needs of individuals of modest means.'' Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit union that adds an underserved community to its field of membership.

II—Occupational Common Bond

II.A—General

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in four ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of an single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond; or
- Employment or attendance at a school makes that person part of a single occupational common bond.

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served will be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or the subsidiaries listed below;
- Employees of ABC Corporation who are paid from . . .;
- Employees of ABC Corporation who are supervised from . . .;
- Employees of ABC Corporation who are headquartered in . . .; and/or
- Employees of ABC Corporation who work in the United States.

So that NCUA may monitor any potential field of membership overlaps, each group to be served (e.g., employees of subsidiaries, franchisees, and contractors) must be separately listed in Section 5 of the charter.

The corporate or other legal entity (i.e., the employer) may also be included in the common bond—e.g., ''ABC Corporation.'' The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of a single occupational common bond are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval

Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);

• Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);

• Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);

• Employees of and students attending Georgetown University. (common bond—same occupation); or

• Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer).

Some Examples of insufficiently defined single occupational common bonds are:

• Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor);

• Persons employed or working in Chicago, Illinois. (no occupational common bond);

• Employees of all colleges and universities in the State of Texas. (not a single occupational common bond); or

• Employees of Timbrook School District and Swanbrook School District, in Burns, Georgia. (not a single occupational common bond).

II.B—Occupational Common Bond Amendments

II.B.1—General

Section 5 of every single occupational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new group sharing the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

• A single occupational common bond to a single associational common bond;

• A single occupational common bond to a community charter; or

• A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or because a portion of the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met.

All amendments to an occupational common bond credit union's field of membership must be approved by the regional director. The regional director may approve an amendment to expand the field of membership if:

• The common bond requirements of this section are satisfied;

• The group to be added has provided a written request for service to the credit union;

• The change is economically advisable; and

• The group presently does not have credit union service available other than through a community charter (if non community credit union service is available, the region must conduct an overlap analysis in accordance with Section II.E of this Chapter).

II.B.2—Corporate Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or if the credit union converts to a multiple common bond credit union.

II.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition, and its likely impact on other credit unions. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section II.E of this Chapter are also applicable.

II.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 200 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 200 primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

• How the group shares the credit union's occupational common bond;

• That the group wants to be added to the applicant federal credit union's field of membership;

• Whether the group presently has other credit union service available; and

• The number of persons currently included within the group to be added and their locations.

• If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section II.E of this Chapter.

The NCUA 4015–EZ (for groups of 200 or less primary potential members) must be accompanied by the following:

• A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:

• How the group shares the credit union's occupational common bond;

• That the group wants to be added to the applicant federal credit union's field of membership; and

• The number of persons currently included within the group to be added and their locations.

II.C—NCUA's Procedures for Amending the Field of Membership

II.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

II.C.2—Regional Director's Decision

All amendment requests will be reviewed by NCUA staff in order to ensure conformance to NCUA policy.

In some cases, an on-site review by a staff member may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

II.C.3—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be issued an amendment to Section 5 of its charter.

II.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedure.

II.C.5—Appeal of Regional Director Decision

If a field of membership expansion, request to remove an exclusionary clause, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Mergers, Purchase and Assumptions, and Spin-offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

II.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single occupational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common

bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

II.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

II.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

II.E—Overlaps

II.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single occupational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same occupational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 200 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the affected credit unions, the applicant must submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- The group has 200 or less primary potential members or the overlap is otherwise incidental in nature—i.e., the group of persons in question is so small as to have no material effect on the original credit union;
- The overlapped credit union does not object to the overlap; or
- There is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.

In reviewing the overlap, the regional director will consider:

- The nature of the issue;
- Efforts made to resolve the matter;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- Whether the original credit union fails to provide requested service;
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single occupational common bond

group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 200 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single occupational federal credit unions to overlap community charters without performing an overlap analysis.

II.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap, and other relevant issues.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

- Employees of Lucky Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation which precludes the credit union from serving the primary members of a portion of a group otherwise included in its field of membership.

When two credit unions agree and/or NCUA has determined that overlap protection is appropriate for safety and soundness reasons, an exclusionary clause will be included in the expanding federal credit union's charter.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. Additionally, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while a co-worker may not. If, for safety and soundness reasons, an exclusionary clause is appropriate, the overlap protection only applies to primary members, which may only provide limited protection.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to independently serve their respective groups as they had prior to their sponsors' consolidation. The addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will define:

- The identity of the group;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union;
- Whether the exclusion is to apply only to the current members of the group or to future members as well; and
- Whether the exclusion is to apply for a limited time period.

Examples of exclusionary wording are:

- Persons who work for Pearl Jam Company, except those who work in, are paid from, or are supervised from San Francisco, California.
- Persons who work for the Fastball Co., except those employed by the Ranger Division as of June 30, 1996.
- Persons who work for CAT Co., except those who were members of the St. Bonaventure Federal Credit Union as of June 30, 1996.

Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them, or a credit union petitions NCUA to remove an exclusionary clause. NCUA may remove the exclusionary clause if it determines that removal is in the best interests of the members and clearly outweighs any adverse effect on the overlapped credit union.

II.F—Charter Conversion

A single occupational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A single occupational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

A credit union will not be permitted to convert to another type of charter, except community charter, for three years after approval, unless the regional director determines that a charter conversion is necessary to resolve safety and soundness concerns.

II.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit

union or refuses to provide needed support; or

- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

II.H—Other Persons Sharing Common Bond

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Member of the immediate family or household; and
- Organizations of such persons.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

III—Associational Common Bond

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws. If the associational charter crosses NCUA regional boundaries, each of the affected regional directors must be consulted prior to NCUA action on the charter.

Qualifying associational groups must hold meetings open to all members, must sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership. Usually, this will be found in the association's charter and bylaws.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, such as:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights;
- Whether the association maintains a membership list;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Individuals or honorary members who only make donations to the association are not eligible to join the credit union. Other classes of membership that do not meet to accomplish the goals of the association would not qualify.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups constitute associational common bonds and may qualify for a federal credit union charter. Homeowner associations, tenant groups, co-ops, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

The terminology ''Alumni of Jacksonville State University'' is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational

charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, and any legal documentation required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—e.g., ''Sprocket Association''—and will be shown in the last clause of the field of membership.

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1997;
- Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association; or
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States. (too broadly defined); or
- Veterans of U.S. military service. (group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University. (no formal association);
- Customers of Fleetwood Insurance Company. (policyholders or primarily customer/client relationships do not meet associational standards);
- Employees of members of the Reston, Virginia Chamber of Commerce. (not a sufficiently close tie to the associational common bond); or
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama. (churches are not of the same denomination).

III.B—Associational Common Bond Amendments

III.B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a new group that shares the credit union's common bond is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met.

All amendments to an associational common bond credit union's field of membership must be approved by the regional director. The regional director may approve an amendment to expand the field of membership if:

- The common bond requirements of this section are satisfied;
- The group to be added has provided a written request for service to the credit union;
- The change is economically advisable; and
- The group presently does not have credit union service available other than through a community credit union (if non community credit union service is available, the region must conduct an overlap analysis in accordance with Section III.E. of this Chapter.)

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event which requires a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition and its likely effect on other credit unions. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section III.E of this Chapter are also applicable.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015), to the appropriate NCUA regional director. If a credit union is adding a group of 200 or less primary potential members, then the NCUA 4015–EZ should be used. The

request must be signed by an authorized credit union representative.

NCUA 4015 (for groups in excess of 200 primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's associational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- Whether the group presently has other credit union service available; and
- The number of persons currently included within the group to be added and their locations.
- The most recent copy of the group's charter and bylaws or equivalent documentation.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section III.E of this Chapter.

The NCUA 4015–EZ (for groups of 200 or less primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's associational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- The number of persons currently included within the group to be added and their locations; and
- The most recent copy of the group's charter and bylaws or equivalent documentation.

III.C—NCUA Procedures for Amending the Field of Membership

III.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

III.C.2—Regional Director's Decision

All amendment requests will be reviewed by NCUA staff in order to ensure conformance to NCUA policy.

In some cases, an on-site review by a staff member may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Regional Director Decision

If a field of membership expansion, request to remove an exclusionary clause, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board.

An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.D—Mergers, Purchase and Assumptions, and Spin-offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to

common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- the public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions and without changing the character of the continuing federal credit union for future amendments. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

Generally, a spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable.

Spin-offs in the same region also require approval by the state regulator, as applicable.

III.E—Overlaps

III.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. As a general rule, NCUA will not charter two or more credit unions to serve the same single associational group. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union. However, when two or more credit unions are attempting to serve the same associational group, an overlap can be permitted.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 200 primary potential members.

When an overlap situation does arise, officials of the involved credit unions must attempt to resolve the overlap issue. If the matter is resolved between the credit unions, the applicant must

submit a letter to that effect from the credit union whose field of membership already includes the subject group.

If no resolution is possible or the overlapped credit union fails to provide a letter, an application for a new charter or field of membership expansion may still be submitted, but must also include information regarding the overlap and documented attempts at resolution. Documentation on the interests of the group, such as a petition signed by a majority of the group's members, will be strongly considered.

An overlap will not be considered adverse to the overlapped credit union if:

- The group has 200 or less primary potential members or the overlap is otherwise incidental in nature—i.e., the group of persons in question is so small as to have no material effect on the original credit union;
- The overlapped credit union does not object to the overlap;
- There is limited participation by members of the group in the original credit union after the expiration of a reasonable period of time; or
- The field of membership is broadly stated, such as a national association.

In reviewing the overlap, the regional director will consider:

- The nature of the issue;
- Efforts made to resolve the matter;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- Whether the original credit union fails to provide requested service;
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

New charter applicants and every single associational common bond group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union except a community charter. This notification requirement is not applicable to groups with 200 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit single associational federal credit unions to overlap community charters without performing an overlap analysis.

III.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5.

Overlaps may occur as a result of restructuring or merger of the parent organization. Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. If an agreement is reached, they must apply to NCUA for a modification of their fields of membership to reflect the groups each will serve. NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns, the desires of the members, the significance of the overlap and other relevant issues.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation which precludes the credit union from serving the primary members of a portion of a group otherwise included in its field of membership.

When two credit unions agree and/or NCUA has determined that overlap protection is appropriate for safety and soundness reasons, an exclusionary clause will be included in the expanding federal credit union's charter.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. Additionally, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one member may be eligible for credit union service while another may not. If, for safety and soundness reasons, an exclusionary clause is appropriate, the overlap protection only applies to primary members, which may only provide limited protection.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two labor unions served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. The addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will define:

- The group to be excluded;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union;
- Whether the exclusion is to apply only to the current members of the group or to future members as well; and
- Whether the exclusion is to apply for a limited time period.

Examples of exclusionary wording are:

- Members of K of C Council ι10, except members of the XYZ Federal Credit Union as of June 30, 1996; or
- Members of the American Bar Association, except those located in Washington, D.C.

Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them, or a credit union petitions NCUA to remove an exclusionary clause. NCUA may remove the exclusionary clause if it determines that removal is in the best interests of the members and clearly outweighs any adverse effect on the overlapped credit union.

III.F—Charter Conversions

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non common bond group that is within a reasonable proximity of a service facility. Groups

within the existing charter may be retained and continue to be served.

However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

A credit union will not be permitted to convert to another type of charter, except community charter, for three years after approval, unless the regional director determines that a charter conversion is necessary to resolve safety and soundness concerns.

III.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or * the group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

III.H—Other Persons Sharing Common Bond

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union; Volunteers;
- Member of the immediate family or household; and
- Organizations of such persons.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

IV—Multiple Occupational/ Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's ''paid from'' or ''supervised from'' location is within the service area.

IV.A.2—Sample Multiple Common Bond Field of Membership

An example of a multiple common bond field of membership is:

''The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;
3. Members of the M&L Association who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1997.''

IV.B—Multiple Common Bond Amendments

IV.B.1—General

Section 5 of every multiple common bond federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group

and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:

- A single occupational/associational charter to a multiple common bond charter;
- A multiple common bond to a single occupational/associational charter;
- A multiple common bond to a community charter; or
- A community to a multiple common bond charter.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group is no longer in existence.

IV.B.2—Numerical Limitation of Select Groups

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. All amendments to a multiple common bond credit union's field of membership must be approved by the regional director.

NCUA will approve groups to a credit union's field of membership, if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is ''adequately capitalized.'' NCUA defines adequately capitalized to mean if the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net capital ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement.
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A more detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

IV.B.3—Documentation Requirements

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015) to the appropriate NCUA regional director. If a credit union is adding a group of 200 or less primary potential members, then the NCUA 4015–EZ should be used. The request must be signed by an authorized credit union representative.

The NCUA 4015 (for groups in excess of 200 primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- The group's occupational or associational common bond;
- That the group wants to be added to the federal credit union's field of membership;
- Whether the group presently has other credit union service available;
- The number of persons currently included within the group to be added and their locations; and
- The group's proximity to credit union's nearest service facility.
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015–EZ (for groups of 200 or less primary potential members) must be accompanied by the following:

- A letter signed by an authorized representative of the group to be added. Wherever possible, this letter must be submitted on the group's letterhead stationery. The regional director may accept such other documentation or certification as deemed appropriate. This letter must indicate:
- How the group shares the credit union's occupational or associational common bond;
- That the group wants to be added to the applicant federal credit union's field of membership;
- The number of persons currently included within the group to be added and their locations; and
- The group's proximity to credit union's nearest service facility.
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

IV.B.4—Corporate Restructuring

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold or spun-off select group to which it has been providing service, without regard to location, if the original group is clearly identifiable. This type of amendment to the credit union's charter is not considered an expansion, therefore the criteria relating to adding new groups are not applicable.

IV.C—NCUA'S Procedures for Amending the Field of Membership

IV.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

IV.C.2—Regional Director's Decision

All amendment requests will be reviewed by NCUA staff in order to ensure conformance to NCUA policy.

In some cases, an on-site review by a staff member may be required by the regional director before acting on a proposed amendment. In addition, the regional director may, after taking into

account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of Section IV.B.2 of this Chapter and will not increase the risk to the NCUSIF.

IV.C.3—Regional Director Approval

If the requested amendment is approved by the regional director, the credit union will be issued an amendment to Section 5 of its charter.

IV.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedure.

IV.C.5—Appeal of Regional Director Decision

If a field of membership expansion, request to remove an exclusionary clause, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. The request will not be considered as an appeal, but as a request for reconsideration by the regional director. If the request is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of date of the last denial by the regional director.

IV.D—Mergers, Purchase amd Assumptions, and Spin-Offs

In general, other than the addition of select groups, there are three additional ways a multiple common bond federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership of another credit union through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

IV.D.1—Voluntary Mergers

a. All select groups in the merging credit union's field of membership have less than 3,000 primary potential members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or more select groups in the merging credit union's field of membership has 3,000 or more primary potential members.

If the merging credit union has any groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a single common bond credit union into a multiple common bond credit union.

A financially healthy single common bond credit union with a primary potential membership in excess of 3,000 primary potential members cannot merge into a multiple common bond credit union, absent supervisory reasons.

d. Merger Approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

IV.D.2—Supervisory Mergers

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority.

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership rules, the 3,000 numerical limitation, or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the

continuing federal credit union without regard to any field of membership restrictions including numerical limitation requirements and without changing the character of the continuing federal credit union for future amendments. Under this authority, any single occupational/associational common bond, multiple common bond, or community charter may merger into a multiple common bond credit union and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions of the continuing multiple common bond credit union must be consistent with multiple common bond policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

IV.D.4—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple common bond policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

IV.D.5—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new charter or goes to an existing federal charter.

The request for approval of a spun-off group must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

IV.E—Overlaps

IV.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Proposed or existing credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an application for a proposed charter or expansion if the group(s) is greater than 200 primary potential members. An overlap analysis is not required for groups with 200 or less primary potential members.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will generally not approve an overlap unless the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in field of membership clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time;
- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its

field of membership from any overlap protection.

New charter applicants and every select group which comes before the regional director for affiliation with an existing federal credit union must advise the regional director in writing whether the group is included within the field of membership of any other credit union. This requirement is not applicable to groups with 200 or less primary potential members. If cases arise where the assurance given to a regional director concerning unavailability of credit union service is inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

IV.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. NCUA will review these requests as it does any select group addition. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

In addition, credit unions must submit to NCUA documentation explaining the restructuring and providing information regarding the new organizational structure. To help in future monitoring of overlaps, the credit union must identify divisions and subsidiaries and the locations of each. Where the sponsor and its employees desire to continue service, NCUA may use wording such as the following:

- Employees of MHS Corporation, formerly a subsidiary of Tool, Incorporated, located in Charleston, South Carolina.

IV.E.3—Exclusionary Clauses

An exclusionary clause is a limitation which precludes the credit union from serving the primary members of a portion of a group otherwise included in its field of membership.

When NCUA determines that overlap protection is appropriate for safety and soundness reasons, an exclusionary clause will be included in the expanding federal credit union's charter.

Exclusionary clauses are very difficult for credit unions and NCUA to monitor properly. Additionally, exclusionary clauses can be ineffective or create obvious inequities—one spouse may be eligible for membership in a federal credit union while the other may not; one employee may be eligible for credit union service while a co-worker may not. If, for safety and soundness reasons, an exclusionary clause is appropriate, the overlap protection only applies to primary members, which may only provide limited protection.

One example of an appropriate use of an exclusionary clause may be where there is a merger of two corporations served by two credit unions which will continue to serve their groups as they had prior to their sponsors' consolidation. The addition of an exclusionary clause to the field of membership of one or both of the credit unions may be the best way to clarify the division of service responsibility within the new corporate entity.

When an exclusionary clause is included in a federal credit union's field of membership, NCUA will define:

- The identity of the group;
- Whether the exclusion is to apply to the entire group or only to those who are actually members of another credit union;
- Whether the exclusion is to apply only to the current members of the group or to future members as well; and

Whether the exclusion is to apply for a limited time period.

Examples of exclusionary wording are:

- Persons who work for Monty Sugar Company, except those who work in, are paid from, or are supervised from San Francisco, California.
- Persons who work for the EWJ Co., except those employed by the JEC Division as of June 30, 1997.
- Persons who work for KLB Co., except those who were members of the St. Bonaventure Federal Credit Union as of June 30, 1997.

Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them, or a credit union petitions NCUA to remove an exclusionary clause. NCUA may remove the exclusionary clause if it determines that removal is in the best interests of the members and clearly outweighs any adverse effect on the overlapped credit union.

IV.F—Charter Conversion

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 1, Section IV.D.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion.

Once a multiple common bond credit union converts to a single occupational or associational credit union, it cannot convert back to a multiple common bond credit union for a period of three years, unless there are safety and soundness concerns.

IV.G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support;

• The group initiates action to be removed from the field of membership; or

• The federal credit union wishes to convert to a single common bond.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. If the regional director concurs with the request, membership may continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

IV.H—Other Persons Sharing Common Bond

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

• Spouses of persons who died while within the field of membership of this credit union;

• Employees of this credit union;

• Persons retired as pensioners or annuitants from the above employment;

Volunteers;

• Member of the immediate family or household; and

• Organizations of such persons.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

V—Community Charter Requirements

V.A.1—General

Community charters must be based on ''a well-defined local community, neighborhood, or rural district.'' NCUA policy is to limit the community to a single, geographically well-defined area where individuals have common interests or interact.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership. More than one credit union may serve the same community. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following requirements for community charters:

• The geographic area's boundaries must be clearly defined;

• The charter applicant must establish that the area is a ''well-defined local, community, neighborhood, or rural district;'' and

• The residents must have common interests or interact.

V.A.2—Documentation Requirements

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide special documentation addressing the proposed area to be served and community service policies.

A community credit union is unique in that it must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly identifiable neighborhood. Although congressional districts or other political boundaries which are subject to occasional change, and state boundaries are well-defined areas, they do not meet the second requirement that the proposed area be a local community, neighborhood, or rural district.

The meaning of local community, neighborhood, or rural district includes a variety of factors. Most prominent is the requirement that the residents of the proposed community area interact or have common interests. In determining interaction and/or common interests, a number of factors become relevant. For example, the existence of a single major trade area, shared governmental or civic facilities, or area newspaper is significant evidence of community interaction and/or common interests. Conversely, numerous trade areas, multiple taxing authorities, and multiple political jurisdictions, tend to diminish the characteristics of a local area.

Population and geographic size are also significant factors in determining whether the area is local in nature. A large population in a small geographic area or a small population in a large geographic area, may meet NCUA community chartering requirements. For example, an ethnic neighborhood, a rural area, a city, and a county with 300,000 or less residents will generally have sufficient interaction and/or common interests to meet community charter requirements. While this may most often be true, it does not preclude community charters consisting of multiple counties or local areas with populations of any size from meeting community charter requirements.

Conversely, a larger population in a large geographic area may not meet NCUA community chartering requirements. It is more difficult for a major metropolitan city, a densely populated county, or an area covering multiple counties with significant population to have sufficient interaction and/or common interests, and to therefore demonstrate that these areas meet the requirement of being ''local.'' In such cases, documentation supporting the interaction and/or common interests will be greater than the evidence necessary for a smaller and less densely populated area.

In most cases, the ''well-defined local community, neighborhood, or rural district'' requirement will be met if (1) the area to be served is in a recognized single political jurisdiction, i.e., a county or its political equivalent or any contiguous political subdivisions contained therein, and if the population

of the requested well-defined area does not exceed 300,000, or (2) the area to be served is in multiple contiguous political jurisdictions, i.e. a county or its political equivalent or any political subdivisions contained therein and if the population of the requested well-defined area does not exceed 200,000. If the proposed area meets either of these this criteria, the credit union must only submit a letter describing how the area meets the standards for community interaction or common interests.

If NCUA does not find sufficient evidence of community interaction or common interests, more detailed documentation will be necessary to support that the proposed area is a well-defined community. The credit union must also provide evidence of the political jurisdiction(s) and population. Evidence of the political jurisdiction(s) should include maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas.

If the area to be served does not meet the political jurisdiction(s) and population requirements of the preceding paragraph, or if required by NCUA, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district. It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- Maps designating the area to be served. One map must be a regional or state map with the proposed community outlined. The other map must outline the proposed community and the identifying geographic characteristics of the surrounding areas;
- Common characteristics and background of residents (for example, income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.); or
- Other documentation that demonstrates that the area is a community where individuals have common interests or interact.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

V.A.3—Special Documentation Requirements for a Converting Credit Union

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership but outside the new community credit union's boundaries may not be included in the new community charter. Therefore, the credit union is required to notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

The documentation requirements set forth in Section V.A.2 of this Chapter must be met before a community charter can be approved. Demonstrating community support, as discussed in Chapter 1, is not required for converting credit unions. In order to support a case for a conversion to community charter, the applicant federal credit union must develop a business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency;
- Pro forma financial statements for the first two years after the proposed conversion, including assumptions—e.g., member, share, loan, and asset growth;
- Marketing plan addressing how the community will be served;
- Financial services to be provided to members;
- Location of service facilities; and
- Anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the institution will be viable and capable of providing services to its members.

V.A.4—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter, usually with north, east, south, and west boundaries.

A community that is a recognized legal entity, may be stated in the field of membership—for example, ''Gus Township, Texas'' or ''Kristi County, Virginia.''

V.A.5—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.6—Sample Community Fields of Membership

A community charter does not have to include all four affinities (i.e., live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work, or attend school at the University of Dayton, in Dayton, Ohio; or

• Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York.

Some examples of insufficiently defined community field of membership definitions are:

• Persons who live or work within and businesses located within a ten-mile radius of Washington, DC (using a radius does not establish a well-defined area); or

• Persons who live or work in the industrial section of New York, New York (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

• Persons who live or work in the Greater Boston Metropolitan Area (does not meet the definition of local community, neighborhood, or rural district).

• Persons who live or work in the State of California (does not meet the definition of local community, neighborhood, or rural district).

V.B—Field of Membership Amendments

A community credit union may amend its field of membership by redefining its geographic boundaries, including additional affinities, or removing exclusionary clauses. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests or interact. The burden of proof for establishing existence of the community is placed upon the applicant credit union.

Prior to granting a field of membership expansion, NCUA will examine the expansion's potential effect on the credit union's operations and financial condition and its likely impact on any newly chartered credit unions in the proposed service area.

Generally, if a community credit union applies to amend its geographic boundaries, or an occupational or associational credit union applies to convert to a community charter, an NCUA staff member will make an on-site evaluation of the proposal.

V.C—NCUA Procedures for Amending the Field of Membership

V.C.1—General

All requests for approval to amend a community credit union's charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

V.C.2—NCUA's Decision

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

V.C.3—NCUA Approval

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

V.C.4—NCUA Disapproval

When NCUA disapproves any application to amend the field of membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

• Specific reasons for the action;

• If appropriate, options or suggestions that could be considered for gaining approval; and

• Appeal procedures.

V.C.5—Appeal of Regional Director Decision

If a field of membership expansion, request to remove an exclusionary clause, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board.

An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the charter amendment is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

V.D—Mergers, Purchase and Assumptions, and Spin-Offs

There are three additional ways a community federal credit union can expand its field of membership:

• By taking in the field of membership of another credit union through a merger;

• By taking in the field of membership through a purchase and assumption (P&A); or

• By taking a portion of another credit union's field of membership through a spin-off.

V.D.1—Standard Mergers

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational/associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the new community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must nofify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

Where a state credit union is merging into a community federal credit union, the continuing federal credit union's

field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership requirements or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions, including the service facility requirement, without changing the character of the continuing federal credit union for future amendments. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

V.D.3—Purchase and Assumptions (P&As)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to community expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

V.D.4—Spin-Offs

Generally, a spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spun-off group goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. Voting requirements for federally insured state credit unions are governed by state law.

V.E—Overlaps

V.E.1—General

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. In general, no overlap protection will be provided to single occupational and associational common bond, multiple common bond, and community credit unions from another community charter.

A newly chartered single or multiple common bond credit union that has been in existence less than two years will be provided overlap protection from a newly chartered or converted federal community charter for a period of 12 to 24 months from the effective date of the overlapped credit union's charter. If safety and soundness concerns exist, overlap protection can be extended by the regional director for a period not to exceed 60 months from the date of charter. This moratorium will provide an opportunity for the new charter to remain economically viable. An exclusionary clause is not required if the overlapped credit union agrees to the overlap.

V.E.2—Exclusionary Clauses

Exclusionary clauses are rarely appropriate for inclusion in a community credit union's field of membership and may only be granted for newly chartered single and multiple common bond credit unions. Exclusionary clauses granted prior to the adoption of this new chartering manual will remain in effect unless the two credit unions agree to remove them, or one of the affected credit unions petitions NCUA to remove an exclusionary clause and NCUA determines that removal is in the best interests of the members.

V.F—Charter Conversions

Although rare, a community federal credit union may convert to a single occupational or associational, or multiple common bond credit union. The converting credit union must meet all occupational, associational, and multiple common bond requirements, as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion, and any groups or communities obtained in an emergency merger or P&A. A change to the credit union's field of membership and designated common bond will be necessary.

V.G—Other Persons With a Relationship to the Community

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Member of the immediate family or household; and
- Organizations of such persons.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. For the purposes of this definition, immediate family member includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

CHAPTER 3—LOW-INCOME CREDIT UNIONS AND CREDIT UNIONS SERVING UNDERSERVED AREAS

I—Introduction

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth and to encourage the formation of new charters as well as the delivery of credit union services in low-income communities.

II—Low-Income Credit Union

II.A—Defined

A low-income credit union is defined in Section 701.34 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual household income falls at or below 80 percent of the median household income for the nation. The term ''low income'' also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members. A low-income designation for a new credit union charter may be based on a majority of the potential membership. The low-income qualification must be maintained in order to retain the low-income designation.

II.B—Special Programs

Credit unions with a low-income designation (except student credit unions) have greater flexibility in accepting non member deposits insured by the NCUSIF, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

II.C—Low-Income Documentation

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple common bond charter applicants cannot supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

II.D—Third Party Assistance

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

II.E—Special Rules for Low-Income Federal Credit Unions

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain only to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple common bond credit union can add low-income associations to their fields of membership.

A low-income community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or go to school in the community, a low-income community federal credit union may also serve persons who perform volunteer services, participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income community and an associational based low-income federal credit union are as follows:

- Persons who live in [the target area]; persons who regularly work, worship, attend school, perform volunteer services, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.
- Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

III—Service to Underserved Communities

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition for serving underserved areas in the Federal Credit Union Act. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

An investment area includes any of the following:

- An area encompassed or located in an Empowerment Zone or Enterprise Community designated under section 1391 or the Internal Revenue Code of 1996 (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater; and the area has significant unmet needs for loans or equity investments;
- An area where the unemployment rate is at least 1.5 times the national average and the area has significant unmet needs for loans or equity investments;
- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent and the area has significant unmet needs for loans or equity investments;
- An area located outside of a Metropolitan Area with a county population loss between 1980 and 1990 of at least 10 percent and the area has significant unmet needs for loans or equity investments.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change and therefore the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of non member deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan, to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the underserved area are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

CHAPTER 4—CHARTER CONVERSIONS

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA's standpoint in the case of a federal to state charter conversion. The procedures and forms relevant to both types of charter conversion are included in Appendix D.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion;
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. Subsequent changes must conform to NCUA chartering policy in effect at that time. The converting credit union may continue to serve members of record.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V. If the state chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

II.B—Submission of Conversion Proposal to NCUA

The following actions must be taken before submitting a conversion proposal:

- The credit union board must approve a proposal for conversion.
- The Application to Convert (NCUA 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.
- The application must be accompanied by all required attachments including the following:
- Written evidence regarding whether the state regulator is in agreement with the conversion proposal;
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (NCUA 4000);
- The most current financial report and delinquent loan schedule; and
- The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable, signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Sections V.A.2 and V.A.3.

II.C—NCUA Consideration of Application to Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

II.C.2—On-Site Review

NCUA will conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.C.5—NCUA Disapproval

When NCUA disapproves any application to convert to a federal charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

II.C.6—Appeal of Regional Director Decision

If a conversion to a federal charter is denied by the regional director, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review

of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and
- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. (See Chapter 1, section VII.D)

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

II.E.4—Credit Union's Name

Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of ''state credit union'' stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the state chartered name can be used by the member until depleted.

II.E.5—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501); and
- Financial and Statistical Reports, as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the application.

If the converting federal credit union does not intend to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non-federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non-federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit after the

final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to all members (NCUA 4506);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

III.D—Approval of Proposal to Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.D.5—NCUA Disapproval

When NCUA disapproves any application to convert to a state charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.D.6—Appeal of Regional Director Decision

If a conversion to a state charter is denied by the regional director, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.E—Approval of Proposal by Members

The members may not vote on the proposal until it is approved by the regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:
- Specify the purpose, time and place of the meeting;
- Include a brief, complete, and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
- Specify the costs of the conversion, i.e., changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;
- Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
- Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
- State in bold face type that the issue will be decided by a majority of members who vote.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition, provided federal insurance is maintained. If the proposed state chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay. The regional director may set a new date for the conversion to be completed.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements.
- The credit union shall neither use the words ''Federal Credit Union'' in its name nor represent itself in any manner as being a federal credit union.
- Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of ''federal credit union'' stationery immediately, and discontinue using credit cards, ATM cards, etc. within 180 days after the effective date of the conversion, or the reissue date—whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the federal chartered name can be used by the member until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.
- If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

Appendix A—Glossary

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized—A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter.

Affinity—A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal—The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

Association common bond—A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan—Plan submitted by a charter applicant or existing federal credit union addressing the economy advisability of a proposed charter or field of membership addition.

Charter—The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond—The Characteristic or combination of a characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational—employment by the same company or related companies; and associational—membership in the same association.

Community credit union—A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

Economic advisability—An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger—Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

Federal share insurance—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership—The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Household—Persons living in the same residence maintaining a single economic unit.

Immediate family member—A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Letter of Understanding and Agreement—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Low income credit union—A low-income credit union is defined in Section 701.34 of the NCUA Rules and Regulations as one where a majority of its members either earn less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or whose annual household income falls at or below 80 percent of the median household income for the nation. The term ''low income'' also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

Mentor—An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

Merger—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union—A credit union whose field of membership consist of more than one group, each of which has a common bond of occupation or association.

Occupational common bond—Employment by the same entity or related entities.

Once a member, always a member—A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Overlap—The situation which results when a group is eligible for membership in more than one credit union.

Primary potential members—Members or employees who belong to an associational or occupational group, or persons who live, work, worship, or attend school within a community chartered credit union's field of membership.

Purchase and assumption—Purchase of all or part of the assets of and assumption of all or part of the liabilities or one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area—The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility—A place where shares are accepted for members' accounts, loan applications are accepted, and loans are dispersed.

Single associational common bond credit union—A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union—A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union—A credit union whose field of membership consists of employees of the same entity or related entities.

Spin-off—The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers—For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Underserved community—A local community, neighborhood, or rural district that is an ''investment area'' as defined in Section 103(16) of the Community Development Banking and Financial institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice—Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

Appendix B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials _____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have a sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the marking of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ of _____ _____.

National Credit Union Administration Board on behalf of the National Credit Union Share Insurance Fund.

_____
Regional Director.

_____
Federal Credit Union
By:

_____
Chief Executive Officer

_____
Date

_____
Chief Financial Officer

_____
Date

_____
Secretary

_____
Date

Appendix C—NCUA Offices

Central Office

1775 Duke Street, Alexandria, VA 22314–3428, Commercial: 703–518–6300

Region I—Albany

9 Washington Square, Washington Avenue Extension, Albany, NY 12205–5512, Commercial: 518–862–7400, FAX: 518–862–7420

Connecticut
Massachusetts
New York
Vermont
Maine
New Hampshire
Rhode Island

Region II—Capital

1775 Duke Street, Suite 4206, Alexandria, VA 22314–3437, Commercial: 703–519–4600, FAX: 703–519–4620

Delaware
Maryland
Pennsylvania
District of Columbia
New Jersey
Virginia

Region III—Atlanta

7000 Central Parkway, Suite 1600, Atlanta, GA 30328–4598, Commercial: 678–443–3300, FAX: 678–443–3020

Alabama
Florida
Kentucky
Mississippi
Puerto Rico
Tennessee
Arkansas
Georgia
Louisiana
North Carolina
South Carolina
Virgin Islands

Region IV—Chicago

4225 Naperville Road, Suite 125, Lisle, IL 60532–3658, Commercial: 630–955–4100, FAX: 630–955–4120

Illinois
Michigan
Ohio
West Virginia
Indiana
Missouri
Wisconsin

Region V—Austin

4807 Spicewood Springs Road, Suite 5200, Austin, TX 78759–8490, Commercial: 512–482–4500, FAX: 512–482–4511

Arizona
Iowa
Minnesota
New Mexico
Oklahoma
Texas
Colorado
Kansas
Nebraska
North Dakota
South Dakota

Region VI—Pacific

2300 Clayton Road, Suite 1350, Concord, CA 94520–2407, Commercial: 925–363–6200, FAX: 925–363–6220

Alaska
Guam
Idaho
Nevada
Utah
Wyoming
California
Hawaii
Montana
Oregon
Washington

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APPENDIX D

NCUA FORMS

NCUA 4000 -- Conversion of State Charter to a Federal Charter -- FCU Investigation Report

NCUA 4001 -- FCU Investigation Report

NCUA 4008 -- Charter

NCUA 4009 -- Approval of Organization Certificate & Certification of Insurance

NCUA 4012 -- Report of Official & Agreement to Serve

NCUA 4015 -- Application for Field of Membership Amendment

NCUA 4015-EZ- Streamlined Application for Field of Membership Amendment

NCUA 4221 -- Notice of Meeting of Members

NCUA 4401 -- Application to Convert from a State Credit Union to an FCU

NCUA 4505 -- Affidavit

NCUA 4506 -- Ballot for Conversion Proposal

NCUA 9500 -- Application and Agreement for Insurance of Accounts

NCUA 9501 -- Certification of Resolutions

NCUA 9600 -- Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts

Conversion of State Charter to Federal Charter

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note of Organizer)

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed Name _____ Federal Credit Union
   Second Choice of Name _____ Federal Credit Union

2. Contact Person _____ Bus. Tel. No./Area Code _____
   Res. Tel. No./Area Code _____

3. The credit union will maintain its office at _____

(City) (County) (State) (Zip)

4. Permanent mailing address of credit union _____

5. Define proposed field of membership (Attach a copy of current state charter field of membership) _____

6. The board will have (an odd number 5 to 15)__members: the credit committee (an odd number, 3 to 7)__members: the supervisory committee (3 to 5)__members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

(Please type or print)

7. List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Year of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*
Name	*Address*	
Occupation		*Years of Membership*

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature _____ **, Organizer**

Organizer's Address _____

NCUA 4000

INSTRUCTIONS

A. INFORMATION FOR CHARTERS AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principle office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in tis trade area. The last three workds in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and address of the subscribers should be recorded legibly and completely in item 7 of this report. It is from this information that the Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008-one notarized original. At least *seven, but no more than ten persons,* must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the Chartering and Field of Membership Manual for a discussion of the components of an acceptable business plan.
5. Certificate of Resolution, NCUA 9501 - one original.

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____ Residence Tel. _____
   Address _____

3. The credit union will maintain its offices at _____
   (City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union _____

4. Define proposed field of membership _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7)_____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate.)

GENERAL INFORMATION

1. Potential membership _____
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____
   Number of people responding to survey _____
   Number of people pledging an initial deposit _____
   Total dollars pledged $ _____
   Number pledging systematic savings _____
   Total dollars pledged (per month) $ _____

3. Number of persons attending the charter-organization meeting _____

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For paperwork Reduction Act Notice, see page 7.

5. What facilities and assistance, if any, will the sponsor provide?

_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $ _____
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries.

_____
_____
_____
_____
_____

7. What potential difficulties do you detect in the elected officials carrying out their management, responsibilities or in the FCU achieving its stated objectives? _____
_____
_____
_____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____
_____
_____
_____

Dates of planned contacts by organizer to determine progress and to assist the group:

_____	_____	_____
(Date)	(Date)	(Date)

SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____

10. What was the highest number of employees during the past three years? _____; Lowest number during the past three years? _____ If a large variance, please explain, _____

11. Are there any contemplated changes in the corporate structure of the company? _____ If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____ If yes, please explain. _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____ if so, give the number and location of the other employees and explain why a credit union is being proposed for this group only, _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring this charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established? _____ Is it incorporated? _____. Where is the headquarters located? _____

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____ Average attendance _____ Dues required _____

22. State the geographic territory where members reside. _____

23. Obtain a copy of the current bylaws of the association, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. Community charters must be based on a well-defined local community, neighborhood, or rural district where individuals have common interests or interact. Describe how the proposed community area meets these requirements _____

27. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals.

28. Describe the proposed area's specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or clearly definable neighborhood. _____

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____ If so, provide a list of the credit union's names and mailing addresses.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:.

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____. If not, explain _____

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____

4. From your investigation, is it your judgement that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____ If not, explain _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____

7. Is an application for a State Charter now pending? _____

8. Has the group ever had a credit union? _____ If so, when did it liquidate or merge? _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____
_____
Telephone No. _____ Date _____

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, Item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principle office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (if occupational based field of membership) management of the sponsor organization;
   b. (if associational based field of membership) officers of the sponsor association;
   c. (if community based field of membership) community leaders and/or *officers* of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the Administration prepares Section 3 of the charter. The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008-one notarized original. At least *seven, but no more than ten persons,* must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *"Chartering and Field of Membership Manual"* for a discussion of the components of an acceptable business plan.
5. Certificate of Resolution, NCUA 9501 - one original.

NATIONAL CREDIT UNION ADMINISTRATION

_____
FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
Page 1

ORGANIZATION CERTIFICATE

_____ **FEDERAL CREDIT UNION**

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

(1) The name of this credit union shall be _____

_____ **Federal Credit Union.**

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have here unto subscribed our names this

_____ _____ _____
(day) (month) (year)

_____ _____

_____ _____

_____ _____

_____

_____

Subscribed before me, an officer competent to

administer oaths, at _____
CITY/STATE

this _____ _____ _____
(day) (month)

_____
(year)

Signed _____

Title _____
(Notary public or other competent officer)

[1]At least seven signers none of whom should administer the oath

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ _____ (day) _____ (month) _____ (year)

_____

CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: **NATIONAL CREDIT UNION ADMINISTRATION**
(Type or Print)

Proposed _____ Federal Credit Union

Name ☐Mr. ☐Ms. ☐Mrs. ☐Miss _____ Title of Newly Elected/Appointed Credit Union Position _____
Last First Middle

Maiden Name (If Different From Above) _____

Address (Res.) _____
Street City State Zip Code

Phone + Area Code _____
(Residence) (Business)

Place of Birth _____ Date of Birth _____
City/State

Employer _____ Social Security Number _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12 (Grade and High School)

1 2 3 4 ( ) (College) MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? . . . . . ☐Yes ☐No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? . . . . . ☐Yes ☐No

Estimated number of hours per month you will be able to donate as a volunteer _____

IF THE ANSWER IS **YES** TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonestly or a breach of trust? . . . . . ☐Yes ☐No

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years) _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE

I certify that the information provided on this form is true and correct. Further, 1, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate and said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side if this form.

_____
Date Signature Witness

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES:

CRIMINAL OFFENSE:

Nature of offense _____

_____

Date of occurrence _____ **Date of conviction** _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided if not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015-EZ

USE ONLY FOR EXPANSIONS COVERING GROUPS OF 200 PERSONS OR LESS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union: _____
_____
_____

2. Name and address of group: _____
_____
_____

(If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.)

3. Provide the proposed field of membership wording: _____
_____
_____

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

- ☐ how the group shares the occupational or associational common bond **(for single common bond additions only)**;
- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ the number of persons to be added and the group's location(s); and
- ☐ the group's proximity to the credit union's nearest service facility **(for multiple common bond additions only)**.

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____	_____	_____
(Typed/Printed Name)	(Signature)	(Date)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT NCUA FORM 4015

USE ONLY FOR EXPANSIONS COVERING GROUPS OF MORE THAN 200 PERSONS

For expansions covering groups of 200 or less persons -- use the short form application, NCUA 4015-EZ.

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

Attach a separate application for each group included in your request for expansion.

1. Name and address of credit union:

_____

_____

_____

2. Name and address of the group:

_____

_____

_____

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual,* Chapter 2:
   - ☐ Section II.A for single occupational common bond groups;
   - ☐ Section III.A for single associational common bond groups; or
   - ☐ Section IV.A for multiple common bond fields of membership.

_____

_____

_____

4. How many primary potential members (excluding immediate family and household members) are in the group: _____

5. (a) For multiple common bond expansions, what is the distance between the group's location and your credit union's nearest service facility[1] to which the group has access (Reference Chapter 2, Section IV.A.1):

_____

_____

[1] **A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted, and loans are disbursed.**

(b) What is the address of this service facility:

_____

_____

_____

(c) Describe the service area[2] primarily served by the above service facility:

_____

_____

_____

_____

6. Is the group in the field of membership of <u>any</u> other credit union? Yes___ No___
If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

_____

_____

_____

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

_____

_____

_____

_____

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

_____

_____

_____

_____

[2] **A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.**

7. Attach a letter, on letterhead stationery if possible, from the group requesting credit union service. This letter must indicate:

   - ☐ how the group shares the occupational or associational common bond **(for single common bond additions only)**;
   - ☐ that the group wants to be added to the federal credit union's field of membership;
   - ☐ whether the group presently has other credit union service available;
   - ☐ the number of persons currently included within the group to be added and the group's location(s);
   - ☐ the group's proximity to the credit union's nearest service facility **(for multiple common bond additions only)**; and
   - ☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards **(for multiple common bond additions only)**. *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

_____

_____

_____

_____

_____

_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____	_____	_____
(Typed/Printed Name)	(Signature)	(Date)

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____ _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____ has been called and will be held at _____ on _____, _____ (year), at _____ o'clock, ___ .M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc): _____

NCUA 4221

The board of directors recommends that the members approve the proposal to convert to a State charter

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address: _____

_____

_____

_____

BY ORDER OF THE BOARD OF DIRECTORS

_____

TITLE:
(CHIEF EXECUTIVE OFFICER)

_____

TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

NCUA 4221

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____ ,____ (year), by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

_____

_____

_____

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

_____

_____

_____

_____

3. Standard financial and statistical reports as of_____, ____ (year), or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

a. Interest rates on loans: _____

_____

b. Charges incident to making loans which are passed on to borrowers: _____

_____

c. Maturity limits: _____

_____

_____

d. Unsecured loan limit: _____

_____

e. Secured loan limit: _____

_____

f. Types of security accepted: _____

_____

g. Requirements of amortization (Repayment requirements): _____

_____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

NCUA 4401

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act.

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union: _____

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____, State of _____ certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectfully, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE:
(CHIEF FINANCIAL OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

NCUA 4401

AFFIDAVIT
PROOF OF RESULTS OF MEMBERSHIP VOTE PROPOSED CONVERSION

We, the undersigned _____ president/vice president and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members _____ voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____

_____ ,this _____ _____ _____ _____
(day) (month) (year)

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____ , _____
(year)

NCUA 4505

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, _____, to consider and to vote upon the following proposition:
(year)

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

NCUA 4506

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgement of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and idemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No. Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18. Sec. 1001.

NCUA 9500

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

> "Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.
>
> Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

NCUA 9501

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered_____ ____ (year)
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served including present members_____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to item No. 5.)

_____

_____

6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No._____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No._____
8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ .(Identify current year statement with (a) after schedule no. and previous Year with (b).)
10. Reserves
    a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
    a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11 a. on page 7. Schedule No._____

b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date _____	Date _____	Date _____	Date _____
	2 mos. to less than 6 mos.	$	$	$	$
	6 mos. to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals				
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year_____	Year_____	Year_____	Current Yr. to Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

*this information is available

12. Does the credit union have any unrecorded or contingent liabilities (Including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)

a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No._____

13. Do any asset accounts (other than loans to members, investments, and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)

a. List on a separate schedule a description of such assets, showing at least the following information; account number, description of item, book value and actual value. Schedule No._____

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14 Schedule No. _____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
	$	$
	$	$
	$	$

15. Individual Share and Loan Ledgers:
   a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application?

   b. What are the differences as of the month and preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$ _____	$ _____
Totals of the trial balance of the individual ledgers	$ _____	$ _____
Differences	$ _____	$ _____

16. Supervisory Committee:
   a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date
      (1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

   b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____
      (1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____

   c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (DISCUSS below or an attached schedule.) Schedule No. _____

17. Surety Bond. List below the credit union's surety bond coverage.
   a. Name of carrier _____
   b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 562 CU-1, other) _____
   c. Basic amount of coverage $ _____
   d. Bond premium paid to (date) _____
   e. What is the amount of coverage required by State law or your bylaws? _____
   f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services
   Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members?
   a. Attach a schedule describing each activity in full. Schedule No. _____

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization?
   a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust?
   a. Attach a statement describing the circumstances. Schedule No. _____

21. Lending policies and practices:
   a. Complete (on page 4) showing the present policies and practices on loans to members.
   b. Complete page 5 in accordance with the instructions pertaining to Item No. 21 b.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Downpayment (Equity)
1. *Credit Union Policies and Practices*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Director, Officers, or Committee Members			
2. *State Credit Union Law; Bylaws*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21b.

Account No.	Unpaid Loan Balance	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		

*if there is more than one type of collateral assign value to each type.

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO'S Organization _____
   (Date of obtaining charter from State)

3. Type of organization (circle one):

   a. General Partnership c. Joint Ownership

   b. Limited Partnership d. Corporation

4. Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

	Name - Charter Number (If FCU)	%	Name - Charter Number (If FCU)	%
a.				
b.				

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

	Name - Charter Number (if FCU)	Amount	Name - Charter Number (if FCU)	Amount
a.				
b.				

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses.)

Item No. 11a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11b: The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has

been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____

(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA'S regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA'S regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA'S regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirement of Title II (Share insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a stat-bartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(I) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA'S regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called and regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed or future officer, committee member or employee is indicted for such an offense.

_____
(Signature) Presiding Officer, Board of Directors

_____
(Print or type Presiding Officer's Name)

_____
(Signature) Recording Officer, Board of Directors

_____
(Print or type Recording Officer's Name)

BILLING CODE 4210–01–C

Appendix E—Trade Associations

Credit Union National Association (CUNA), P.O. Box 431, Madison, WI 53701, 608–231–4000

National Association of Federal Credit Unions (NAFCU), 3138 N. 10th Street, Suite 300, Arlington, VA 22201, 703–522–4770

National Association of State Credit Union Supervisors (NASCUS), 1901 North Fort Myer Drive, Suite 201, Arlington, VA 22209, 703–528–8351

National Federation of Community Development Credit Unions (NFCDCU), 120 Wall Street, 10th Floor, New York, NY 10005–3902, 212–809–1850

[FR Doc. 98–34032 Filed 12–29–98; 8:45 am]

BILLING CODE 4210–01–P

federal register

Wednesday
December 30, 1998

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 285

Offset of Tax Refund Payments To Collect Past-Due Support; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AA63

Offset of Tax Refund Payments To Collect Past-Due Support

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: Federal law authorizes the Federal tax refund of a taxpayer who owes past-due support to be reduced, or offset, by the amounts owed by the taxpayer. Past-due support includes delinquent child support or other obligations for the support of a child. The funds offset from a taxpayer's tax refund are forwarded to the State enforcing the collection of the past-due support. Effective January 1, 1999, the Department of the Treasury will conduct the tax refund offset program as part of the centralized offset program, known as the Treasury Offset Program, operated by the Financial Management Service (FMS), a bureau of the Department of the Treasury. This final rule establishes tax refund offset procedures that supersede the procedures governing the tax refund offset program established by the Internal Revenue Service (IRS) and applicable to the collection of past-due support (codified at 26 CFR 301.6402–5). Differences between this rule and the IRS rule reflect requirements necessitated by the inclusion of the tax refund offset program as a part of the Treasury Offset Program.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gerry Isenberg, Financial Program Specialist, at (202) 874–6660; or Ronda Kent or Ellen Neubauer, Senior Attorneys, at (202) 874–6680. A copy of this rule is being made available for downloading from the Financial Management Service web site at the following address: http://www.fms.treas.gov/debt.

SUPPLEMENTARY INFORMATION:

Background

General

Under 26 U.S.C. 6402(c) and 42 U.S.C. 664, Federal tax payments may be withheld or reduced to collect past-due support on behalf of States. This process is known as ''offset'' or ''tax refund offset.'' The Internal Revenue Service (IRS) has been collecting past-due support for States by tax refund offset since 1982. ''Past-due support'' means the amount of support, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid.

The Debt Collection Improvement Act of 1996 (DCIA), Pub. L. 104–134, 110 Stat. 1321, 1358 (1996), established a centralized process for offsetting eligible nontax Federal payments to collect delinquent debt owed to the United States. In addition, the DCIA authorized offset of such payments to collect past-due support being enforced by States, as well as other debts owed to States.

The Financial Management Service (FMS), the disbursing agency of the Department of the Treasury (Treasury), is responsible for the implementation of centralized offset in accordance with the provisions of the DCIA. To meet this responsibility, FMS established the ''Treasury Offset Program.'' To improve the efficiency of Treasury's collection of debts, including past-due support, operation of the tax refund offset program will be included as part of the Treasury Offset Program effective January 1, 1999. The provisions and legislative history of the DCIA clarified that FMS may conduct tax refund offsets to collect past-due support (see §§ 31001(v)(2) of the DCIA, codified at 42 U.S.C. 664(a); 142 Cong. Rec., 104th Cong. 2d Sess., H4087, H4090 (Apr. 25, 1996)).

On August 4, 1998, FMS issued a notice of proposed rulemaking (NPRM) (63 FR 41688, August 4, 1998) proposing changes to the tax refund offset procedures for the collection of past-due support after January 1, 1999. For tax refund payments after January 1, 1999, the revised procedures, as finalized in this rule, supersede the procedures governing the tax refund offset program established by the IRS and applicable to the collection of past-due support (codified at 26 CFR 301.6402–5).

This rule governs only the offset of one type of payment, tax refunds, to pay one type of delinquent debt, past-due support. FMS has promulgated separate rules and procedures governing other types of offset, such as tax refund offset for the collection of debts owed to the Federal Government (31 CFR 285.2, 63 FR 46139, August 28, 1998) and the offset of nontax Federal payments for the collection of past-due child support (31 CFR 285.1, 63 FR 46141, August 28, 1998). *See also,* Offset of Federal Benefit Payments (31 CFR 285.4, 63 FR 44985, August 21, 1998) and Salary Offset (31 CFR 285.7, 63 FR 23354, April 28, 1998). FMS will promulgate other rules governing offset of nontax Federal payments for the collection of debts (other than child support) owed to Federal agencies and States. FMS anticipates that Part 285 of this title ultimately will contain all of the provisions relating to centralized offset by disbursing officials for the collection of debts owed to the Federal Government and to State governments, including past-due child support being enforced by States.

The Treasury Offset Program

The Treasury Offset Program currently works as follows. FMS maintains a delinquent debtor database. The database contains delinquent debtor information submitted and updated by Federal agencies owed debts, and by States collecting debts including any past-due support being enforced by States. Before a Federal payment is disbursed to a payee, FMS compares the payee information with debtor information in the delinquent debtor database operated by FMS. If the payee's name and taxpayer identifying number (TIN) match the name and TIN of a debtor, the payment is offset, in whole or part, to satisfy the debt, to the extent allowed by law. Since FMS issues different payment types daily, the collection of past-due support can be satisfied by the offset of a variety of Federal payment types including, but not limited to, vendor, salary, and retirement payments, as well as tax refund payments.

FMS transmits amounts collected to the appropriate agencies or States owed the delinquent debt after deducting a fee charged to cover the cost of the offset program. Information about a delinquent debt or past-due support obligation remains in the debtor database for offset as long as the debt remains past-due and legally collectible by offset, or until debt collection activity for the debt is terminated because of full payment, compromise, write-off or other reasons justifying termination or removal of the debt from the database.

Offset of Tax Refund Payments To Collect Past-Due Child Support Under the Treasury Offset Program

This rule establishes tax refund offset procedures that supersede the procedures governing the tax refund offset program established by the IRS and applicable to the collection of past-due support (codified at 26 CFR 301.6402–5). Tax refund payments issued after January 1, 1999, will be offset to collect past-due support as part of the Treasury Offset Program in accordance with the requirements of 26

U.S.C. 6402(c) and 42 U.S.C. 664. Procedures for processing claims by non-debtor spouses and for rejecting a taxpayer's election to apply his or her refund to future tax liabilities remain governed by IRS rules. In addition, nothing in this rule changes the pre-offset procedures established by the Department of Health and Human Services (HHS) rules implementing 42 U.S.C. 664. *See* 45 CFR 303.72. HHS issued guidance to all States on July 6, 1998, concerning the procedures for States to submit past-due support debts for offset purposes, including procedures pertaining to the debt certification process. *See* Office of Child Support Enforcement (OCSE) Action Transmittal No. OCSE–AT–98–17 (OCSE's AT–98–17).

The preamble to the NPRM explained the proposed process of offsetting tax refund payments to collect past-due support under the Treasury Offset Program, as well as the differences between the proposed procedures and the IRS procedures. The NPRM also contained a section-by-section analysis of the proposed rule. (See 63 FR 41688–41691)

FMS developed this final rule in consultation with the IRS and HHS and appreciates their assistance. As required by 42 U.S.C. 664(b)(1), HHS has approved this final rule.

Comments to the NPRM

In response to the NPRM, FMS received comments from seven (7) State child support enforcement agencies which are discussed below.

General Comments

In response to a commenter's request that the regulation clarify that States cannot submit debts directly to FMS for tax refund offset purposes unless authorized by HHS rules, § 285.3(c)(3) has been revised in the final rule by adding the following first sentence: ''States must notify HHS of past-due support in accordance with the provisions of paragraph (c)(2) of this section unless HHS rules authorize notification to FMS directly.'' Though this rule provides States with the flexibility to refer past-due support debts directly to FMS, current HHS rules governing programs under Chapter 7, Subchapter IV, Part D, of title 42 of the U.S. Code (Title IV–D of the Social Security Act), require States to report past-due support debts to HHS for tax refund offset purposes. This rule does not supersede existing HHS rules; it merely provides flexibility should HHS decide to amend its rules in the future to allow States to refer past-due support debts directly to FMS. States will be notified if HHS amends its rules to allow direct submission to FMS. At that time, as suggested by one commenter, HHS and FMS will work with States to review any impact direct submission may have on the States.

Another commenter asked whether FMS would require States to use administrative offset if HHS rules allowed States to submit debts directly to FMS. FMS has no plans to implement such a requirement. In response to another commenter's question regarding submission of debts to FMS, FMS will allow States to increase balances on debts and to submit debts on an on-going basis throughout the year for debts submitted through HHS or directly to FMS.

Section 285.3(a)—Definitions

State. The public was specifically invited to comment on the impact of including or excluding legal subdivisions of States in the definition of State. Based on two comments received and discussions with HHS regarding current procedures for county reporting, FMS determined that the definition of State in the NPRM would not create an impediment to the collection of past-due support. Counties seeking to participate in the offset program may do so by reporting through the State's IV–D program. Therefore, the definition of ''State'' was not changed to include legal subdivisions.

The public also was invited to comment about whether tribal governments operating child support enforcement programs should be treated in the same manner as States for purposes of this rule. One commenter noted that treating tribal governments operating child support enforcement programs in the same manner as States is consistent with the definition of State as defined in section 101, paragraph (19) of the Uniform Interstate Family Support Act. For the time being, it is anticipated that States will continue to submit past-due support debts to the tax refund offset program pursuant to cooperative agreements with tribal governments. Therefore, the final rule has not been changed. OCSE is in consultation with the tribes and States and will formulate policy on this issue as it becomes appropriate. OCSE will keep the public advised.

Section 285.3(c)—Notification of Past-Due Support

One commenter questioned why the minimum debt referral amount in § 285.3(c)(1) was different for debts assigned to a State ($25) than for debts not assigned to a State ($500). Federal law prohibits the use of tax refund offset for non-assigned past-due support debts less than $500. *See* 42 U.S.C. 664(b)(2)(A). There is no similar statutory minimum dollar threshold for past-due support debts assigned to a State. Another State questioned whether the $25 minimum for assigned debts would create confusion since HHS rules currently set a minimum threshold of $150. FMS has set minimum thresholds as low as possible in order to maximize the collection of past-due support debts through offset. Until States are authorized by HHS to submit debts in Title IV–D cases at a lower threshold, the current minimum threshold set by HHS is applicable. Section 285.3(c)(1)(i)(A) has been revised to allow referral of assigned debts not less than $25, or such higher amount as HHS rules may allow, whichever is greater.

FMS received several comments related to the advance notice requirements described in paragraphs (c)(4) and (c)(5) of § 285.3. HHS rules (*see* 45 CFR 303.72(e) and OCSE's AT–98–17) describe the requirements pertaining to providing advance notice to the debtors of the State's intent to submit a debt for offset. Since HHS rules govern advance notice requirements, the final rule does not incorporate one commenter's suggestion that the regulation be revised to clarify that a one-time notice to a debtor, rather than an annual notice, is sufficient in all cases. HHS' rules allow States to determine specifically how frequently advance notice will be provided. Additionally, OCSE's AT–98–17 indicates that because the amount of the debt may exceed the amount originally indicated in the notice, States are encouraged to send periodic notices, especially where there are significant increases in the amount of the debt. In response to other comments, the first sentence of § 285.3(c)(4) in the final rule has been changed to clarify that, as authorized by 45 CFR 303.72(e), HHS may send advance notice to the debtor on behalf of a State. Currently, FMS has no plans to send advance notices to debtors on behalf of a State.

With respect to the collection of past-due support enforced by multiple States as described in § 285.3(c)(6), one commenter suggested that FMS and/or HHS inform States via reports when multiple States are enforcing the same debt. When a debt is being enforced by multiple States, the rule requires notification to the other enforcing State only if a State has knowledge of such multiple enforcement. HHS and FMS will work with States to resolve multiple enforcement issues as they arise. Although at this time there are no plans for providing systematic

notification to States to alert them to multiple enforcement issues, HHS and FMS will review whether such notification is desirable.

Section 285.3(d)—Priorities for Offset

The public was invited to comment on how a tax refund payment should be applied to a taxpayer's multiple debts within the same category. Two commenters suggested that any refund be applied proportionately to the taxpayer's multiple public assistance debts owed to two or more States, using the total past-due amount as 100%. Another commenter requested that the debts be paid in the order in which they were submitted for offset. OCSE's AT–98–17 indicates that OCSE and FMS have agreed to continue preexisting processing procedures during the transition of the tax refund offset program from IRS to FMS, thus processing and giving priority on a first-in-first-processed basis. In the future, recommendations for alternate processing procedures will be reviewed by OCSE and FMS.

The final rule has been changed to reflect recently enacted legislation (Pub. L. 105–206, July 22, 1998) authorizing Treasury to offset tax refunds to collect delinquent State income tax obligations. Section 285.3(d) has been changed to reflect the provisions of the new law under which such State income tax obligations will be paid from a taxpayer's tax refund only after the tax refund has been applied to satisfy the taxpayer's delinquent child support obligations and debts owed to the Federal Government. *See* 26 U.S.C. 6402(e).

Section 285.3(e)—Post-Offset Notice

One commenter suggested that § 285.3(e)(2) include a reporting period regarding FMS' offset report to HHS or the States. As in the NPRM, the final rule does not include a reporting period because FMS will establish mutually agreed upon periods with HHS or affected States.

With respect to § 285.3(e)(4), the commenter questioned whether FMS' report to HHS regarding States' participation in offset (submissions of debts and offset collections) would include cases submitted to FMS directly and those submitted through HHS. Pursuant to the provisions of § 285.3(e)(4), the details and requirements of such reports will be developed by HHS and FMS but will not be included in the rule. It is anticipated that reports will include information about cases submitted to FMS directly and through HHS. Contrary to the commenter's concern, if, for some reason, the reporting period is limited to annually, the provisions of this regulation allowing States to submit cases on an ongoing, rather than annual, basis will not be affected.

Section 285.3(h)—Fees

The final rule does not incorporate a commenter's suggestion that § 285.3(h) specify a time frame within which States would be notified of fee changes prior to any change. FMS will work with HHS and States to ensure that States have sufficient advance notification of any fee changes.

Another commenter recommended that the fee structure be identified in the regulation and remain at a level that will allow for the offset program to be successful. Under 42 U.S.C. 664, Treasury is authorized to charge fees to recover the full cost of applying the offset procedure. This rule requires that the fee be established annually in such amount as FMS and HHS agree. The fee will be no more than $25 per case submitted per year. FMS will work with HHS to ensure that States are provided with information concerning the fee structure, and that the amount of the fee does not negatively impact the success of the program.

Regulatory Analyses

This final rule is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that this rule impacts only individuals who receive tax refunds and who owe past-due support. Therefore, a regulatory flexibility analysis is not required.

FMS has determined that this rule may affect family well-being. It is hereby certified that this rule has been assessed in accordance with Section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277). This rule will not have a negative impact on family well-being because it strengthens the financial well-being of families by assisting in the collection of past-due child support.

Special Analysis

FMS has determined that good cause exists to make this final rule effective upon publication without providing the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). The purpose of a delayed effective date is to afford persons affected by a rule a reasonable time to prepare for compliance. However, in this case, Treasury has been collecting past-due support for States by tax refund offset since 1982. Procedures affecting States submitting delinquent child support obligations for collection and persons owing delinquent child support obligations remain substantially unchanged. Effective January 1, 1999, the tax refund offset program will be part of the centralized offset program operated by FMS. This final rule provides important guidance that is expected to facilitate States' participation in the tax refund offset program. Therefore, FMS believes that good cause exists to make the rule effective upon publication.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Child support, Child welfare, Claims, Debts, Privacy, Taxes.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR Part 285 is amended as follows:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

1. The authority citation for part 285 is revised to read as follows:

Authority: 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019; 3 CFR, 1996 Comp., p. 216.

2. Section 285.3 is added to subpart A to read as follows:

§ 285.3 Offset of tax refund payments to collect past-due support.

(a) *Definitions.* For purposes of this section:

Debt as used in this section is synonymous with the term past-due support unless otherwise indicated.

Debtor as used in this section means a person who owes past-due support.

FMS means the Financial Management Service, a bureau of the Department of the Treasury.

HHS means the Department of Health and Human Services, Office of Child Support Enforcement.

IRS means the Internal Revenue Service, a bureau of the Department of the Treasury.

Past-due support means the amount of support, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid, as defined in 42 U.S.C. 664(c).

Qualified child means a child:

(i) Who is a minor, or

(ii) Who, while a minor, was determined to be disabled under subchapters II or XVI, Chapter 7, Title 42, United States Code, and for whom an order of support is in force.

State means the several States of the United States. The term ''State'' also includes the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Commonwealth of Puerto Rico.

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Tax refund payment means any overpayment of Federal taxes to be refunded to the person making the overpayment after the IRS makes the appropriate credits as provided in 26 U.S.C. 6402(a) and 26 CFR 6402–3(a)(6)(i) for any liabilities for any Federal tax on the part of the person who made the overpayment.

(b) *General rule.* (1) Past-due support will be collected by tax refund offset upon notification to FMS in accordance with 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section. Collection by offset under 26 U.S.C. 6402(c) is a collection procedure separate from the collection procedures provided by 26 U.S.C. 6305 and 26 CFR 301.6305–1, relating to the assessment and collection of certain child and spousal support liabilities. Tax refund offset may be used separately or in conjunction with the collection procedures provided in 26 U.S.C. 6305, as well as other collection procedures.

(2) FMS will compare tax refund payment records, as certified by the IRS, with records of debts submitted to FMS. A match will occur when the taxpayer identifying number (as that term is used in 26 U.S.C. 6109) and name of a payment certification record are the same as the taxpayer identifying number and name of a delinquent debtor record. When a match occurs and all other requirements for tax refund offset have been met, FMS will reduce the amount of any tax refund payment payable to a debtor by the amount of any past-due support debt owed by the debtor. Any amounts not offset will be paid to the payee(s) listed in the payment certification record.

(c) *Notification of past-due support.* (1) *Past-due support eligible for tax refund offset.* Past-due support qualifies for tax refund offset if:

(i)(A) There has been an assignment of the support obligation to a State and the amount of past-due support is not less than $25.00, or such higher amount as HHS rules may allow, whichever is greater; or

(B) A State agency is providing support collection services under 42 U.S.C. 654(4), the amount of past-due support is not less than $500.00, and the past-due support is owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent); and

(ii) A notification of liability for past-due support has been received by FMS as prescribed by paragraphs (c)(2) or (c)(3) of this section.

(2) *Notification of liability for past-due support and transmission of information to FMS by HHS.* States notifying HHS of past-due support shall do so in the manner and format prescribed by HHS. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. HHS shall consolidate and transmit to FMS the information contained in the notifications of liability for past-due support submitted by the States provided that the State has certified that the requirements of paragraph (c)(4) of this section have been met.

(3) *Notification of liability for past-due support transmitted directly to FMS by States.* States must notify HHS of past-due support in accordance with the provisions of paragraph (c)(2) of this section unless HHS rules authorize notification to FMS directly. If authorized by HHS rules, States may notify FMS directly of past-due support. States notifying FMS directly of past-due support shall do so in the manner and format prescribed by FMS. The notification of liability shall be accompanied by a certification that the State has complied with the requirements contained in paragraph (c)(4) of this section and with any requirements applicable to the offset of Federal tax refunds to collect past-due support imposed by State law or procedures. FMS may reject a notification of past-due support which does not comply with the requirements of this section. Upon notification of the rejection and the reason for rejection, the State may resubmit a corrected notification.

(4) *Advance notification to debtor of intent to collect by tax refund offset.* The State, or HHS if the State requests and HHS agrees, is required to provide a written notification to the debtor, pursuant to the provisions of 42 U.S.C. 664(a)(3) and 45 CFR 303.72(e), informing the debtor that the State intends to refer the debt for collection by tax refund offset. The notice also shall:

(i) Instruct the debtor of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support;

(ii) Advise any non-debtor who may file a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund; and

(iii) In cases when a debt is being enforced by more than one State, advise the debtor of his or her opportunities to request a review with the State enforcing collection or the State issuing the support order as prescribed by the provisions of 45 CFR 303.72(g).

(5) *Correcting and updating notification.* The State shall, in the manner and in the time frames provided by FMS or HHS, notify FMS or HHS of any deletion or net decrease in the amount of past-due support referred to FMS, or HHS as the case may be, for collection by tax refund offset. The State may notify FMS or HHS of any increases in the amount of the debt referred to FMS for collection by tax refund offset provided that the State has complied with the requirements of paragraph (c)(4) of this section with regard to those debts.

(6) *Collection of past-due support enforced by multiple States.* When a State has knowledge that the debt is being enforced by more than one State, the State notifying FMS, or HHS as the case may be, of the debt shall inform any such other State involved in enforcing the debt when it receives the offset amount.

(d) *Priorities for offset.* (1) As provided in 26 U.S.C. 6402 as amended, a tax refund payment shall be reduced in the following order of priority:

(i) First by the amount of any past-due support assigned to a State (welfare cases) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section;

(ii) Second, by the amount of any past-due, legally enforceable debt owed to a Federal agency which is to be offset under 26 U.S.C. 6402(d), 31 U.S.C. 3720A and § 285.2 of this part;

(iii) Third, by the amount of any qualifying past-due support not assigned to a State (non-welfare cases) which is to be offset under 26 U.S.C. 6402(c), 42 U.S.C. 664 and this section; and

(iv) Fourth, by the amount of any past-due, legally enforceable State income tax obligation which is to be offset under 26 U.S.C. 6402(e).

(2) Reduction of the tax refund payment pursuant to 26 U.S.C. 6402(a), (c), (d), and (e) shall occur prior to crediting the overpayment to any future liability for an internal revenue tax. Any amount remaining after tax refund offset under 26 U.S.C. 6402(a), (c), (d), and (e) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer pursuant to IRS regulations.

(e) *Post-offset notice.* (1) (i) FMS shall notify the debtor in writing of:

(A) The amount and date of the offset to satisfy past-due support;

(B) The State to which this amount has been paid or credited; and

(C) A contact point within the State that will handle concerns or questions regarding the offset.

(ii) The notice in paragraph (e)(1)(i) of this section also will advise any non-debtor who may have filed a joint tax return with the debtor of the steps which a non-debtor spouse may take in order to secure his or her proper share of the tax refund. See paragraph (f) of this section.

(2) FMS will advise HHS of the names, mailing addresses, and identifying numbers of the debtors from whom amounts of past-due support were collected, of the amounts collected from each debtor through tax refund offset, the names of any non-debtor spouses who may have filed a joint return with the debtor, and of the State on whose behalf each collection was made. Alternatively, FMS will provide such information to each State that refers debts directly to FMS. FMS will inform HHS and each State that the payment source is a tax refund payment.

(3) At least weekly, FMS will notify the IRS of the names and taxpayer identifying numbers of the debtors from whom amounts owed for past-due support were collected from tax refund offsets and the amounts collected from each debtor.

(4) At such time and in such manner as FMS and HHS agree, but no less than annually, FMS will advise HHS of the States which have furnished notices of past-due support, the number of cases in each State with respect to which such notices have been furnished, the amount of past-due support sought to be collected by each State, and the amount of such tax refund offset collections actually made in the case of each State. As FMS and HHS may agree, FMS may provide additional offset-related information about States which have furnished notices of past-due support.

(f) *Offset made with regard to a tax refund payment based upon joint return.* If the person filing a joint return with a debtor owing the past-due support takes appropriate action to secure his or her proper share of a tax refund from which an offset was made, the IRS will pay the person his or her share of the refund and request that FMS deduct that amount from amounts payable to HHS or the State, as the case may be. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(g) *Disposition of amounts collected.* FMS will transmit amounts collected for debts, less fees charged under paragraph (h) of this section, to HHS or to the appropriate State. If FMS learns that an erroneous offset payment is made to HHS or any State, FMS will notify HHS or the appropriate State that an erroneous offset payment has been made. FMS may deduct the amount of the erroneous offset payment from amounts payable to HHS or the State, as the case may be. Alternatively, upon FMS' request, the State shall return promptly to the affected taxpayer or FMS an amount equal to the amount of the erroneous payment (unless the State previously has paid such amounts, or any portion of such amounts, to the affected taxpayer). HHS and States shall notify FMS any time HHS or a State returns an erroneous offset payment to an affected taxpayer. FMS and HHS, or the appropriate State, will adjust their debtor records accordingly.

(h) *Fees.* The State will pay a fee to FMS for the full cost of administering the tax refund offset program. The fee (not to exceed $25 per case submitted) will be established annually in such amount as FMS and HHS agree to be sufficient to reimburse FMS for the full cost of the offset procedure. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for its share of the cost of administering the tax refund offset program. Fees will be charged only for actual tax refund offsets completed.

(i) *Review of tax refund offsets.* In accordance with 26 U.S.C. 6402(f), any reduction of a taxpayer's refund made pursuant to 26 U.S.C. 6402(c), (d), or (e) shall not be subject to review by any court of the United States or by the Secretary of the Treasury, FMS or IRS in an administrative proceeding. No action brought against the United States to recover the amount of this reduction shall be considered to be a suit for refund of tax.

(j) *Access to and use of confidential tax information.* Access to and use of confidential tax information in connection with the tax refund offset program is permitted to the extent necessary in establishing appropriate agency records, locating any person with respect to whom a reduction under 26 U.S.C. 6402(c) is sought for purposes of collecting the debt, and in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).

(k) *Effective date.* This section applies to tax refund payments payable under 26 U.S.C. 6402 after January 1, 1999.

Dated: December 16, 1998.

Richard L. Gregg,

Commissioner.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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